

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

KENNETH CREIGHTON,

Plaintiff,

-against-

12 CV 07454

THE CITY OF NEW YORK, DETECTIVE DEAN ROBERTS (Shield No. 05861), DETECTIVE GLENN GODINO (Shield No. 2756), POLICE OFFICERS JOHN DOES 1-10 (names being fictitious and presently unknown and intended to be employees of the New York City Police Department who were involved in plaintiff's arrest, detention, imprisonment and/or prosecution), DISTRICT ATTORNEY ROBERT T. JOHNSON, ASSISTANT DISTRICT ATTORNEY BRUCE BIRNS, ASSISTANT DISTRICT ATTORNEY BRIAN BURNS, ASSISTANT DISTRICT ATTORNEY ED TALKY a/k/a ED TULTY and ASSISTANT DISTRICT ATTORNEY MICHAEL COOPER,

Defendants.

- - - - -X

20 Vesey Street  
New York, New York

April 11, 2016  
10:10 a.m.

DEPOSITION of DETECTIVE GLENN GODINO, a Defendant herein, held at the above time and place, taken before Joanna Bojaryn, a Notary Public of the State of New York, pursuant to the Federal Rules of Civil Procedure and stipulations between Counsel.

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2 A P P E A R A N C E S

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16

By: KAVIN THADANI, ESQ.

17 File No. 2012-006428

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## S T I P U L A T I O N S

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IT IS HEREBY STIPULATED and AGREED, by and between the attorneys for the respective parties hereto, that:

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IT IS HEREBY STIPULATED and AGREED, all rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

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IT IS HEREBY STIPULATED and AGREED, this deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the right provided by Rule 3116 of the C.P.L.R., and shall be controlled thereby. The filing of the original of this deposition is waived.

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IT IS FURTHER STIPULATED and AGREED, that a copy of this examination shall be furnished to attorney for the witness being examined without charge.

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2 G L E N N G O D I N O,

3 after having been first duly sworn by

4 Joanna Bojaryn, a Notary Public of the

5 State of New York, was examined and

6 testified as follows:

7 EXAMINATION BY

8 RICHARD GROSS, ESQ.

9 Q Please state your full name for the  
10 record.

11 A Glenn Godino.

12 Q Please state your business address for  
13 the record.

14 A 167 East 51st Street, New York, New York  
15 10022.

16 Q Good morning.

17 A Good morning.

18 Q My name is Richard Gross, for the  
19 record, and I represent Mr. Creighton in the lawsuit  
20 that you are a defendant in.

21 A Okay.

22 Q I am going to be asking you some  
23 questions about the events that took place that may  
24 have involved you or information that you might have.  
25 If I ask you any questions that you don't understand,

1 GLENN GODINO

2 please let me know and I will rephrase them.

3 A Okay.

4 Q You have to answer verbally, I am sure  
5 you know that by now. She can't get nods of the head  
6 or grunts accurately.

7 A Okay.

8 Q As I said, if you don't understand a  
9 question that I ask, let me know and I will try to  
10 rephrase it. Otherwise, I am going to assume that you  
11 are answering the questions responsively, okay?

12 A Okay.

13 Q What was the date of your appointment as  
14 a police officer?

15 A June 30th, 1995.

16 Q Okay. And after you became appointed as  
17 a police officer, was the first place you went as a  
18 police officer to the police academy?

19 A Yes.

20 Q Okay. And you were there for six  
21 months?

22 A Nine months.

23 Q Did you have any specialized training  
24 other than the usual courses that were given during  
25 the nine months that you were at the police academy?

1 GLENN GODINO

2 MR. THADANI: Objection.

3 Q You can answer.

4 A Not that I am aware of.

5 Q During the time you were at the police  
6 academy you were given courses and tested in a variety  
7 of subjects?

8 MR. THADANI: Objection.

9 A Yes, I was.

10 Q And that included law, political  
11 science, social sciences, correct?

12 A Yes, I was.

13 Q Okay. And some of that training  
14 involved the Penal Law and procedures, correct?

15 A Yes, it was.

16 Q And while you were at the police  
17 academy, were you given specific training with regard  
18 to Brady requirements?

19 MR. THADANI: Objection.

20 A I don't know what Brady requirements  
21 are.

22 Q Are you familiar with Brady Rosario as a  
23 concept?

24 MR. THADANI: Objection.

25 A Is that Rosario where you have to keep

1 GLENN GODINO

2 anything regarding the case?

3 Q That's correct.

4 A I didn't know it was Brady, so yes,  
5 Rosario.

6 Q Sometimes they call it Brady and  
7 sometimes they call it Rosario. I will go into a  
8 little more depth later.

9 For the basis of the questions I am going  
10 to be asking you today, I may not always say Brady  
11 Rosario, but that's what I am referring to even if I  
12 am just talking about it as Brady, understood?

13 A Okay.

14 Q At some point early in your career did  
15 you receive what's known as a patrol guide?

16 A Yes, I did.

17 Q Do you still have a patrol guide?

18 A If I do, I have no idea where it is, but  
19 there is on the computer a patrol guide.

20 Q So if you need to check something about  
21 procedures, you can go on the computer and access it  
22 that way?

23 A Yes, I can.

24 Q Would you agree that the patrol guide is  
25 basically the rules that police officers and

1 GLENN GODINO

2 detectives are required to operate under on a  
3 day-to-day basis?

4 A Patrol guide is a guide. It guides you  
5 on what you may or may not have to do. It's not  
6 chiseled in stone, that's why they call it a guide.

7 Q But there are procedures laid out there  
8 in the patrol guide that are standards generally to be  
9 followed with regard to the various things a police  
10 officer would do, right?

11 A It guides them to what they should do.

12 Q Some of those areas that are covered in  
13 the patrol guide are things like how to conduct line  
14 ups, how to conduct photo arrays, the warnings that  
15 you have to give somebody when you are questioning,  
16 that kind of thing?

17 A Yes.

18 Q Have you ever received anything, and I  
19 may not have the title exactly right, I know it's  
20 changed, that involves being a detective, a manual,  
21 paperwork that regards procedures to follow as a  
22 detective?

23 A I don't know exactly what manual you are  
24 talking about.

25 Q Let me make the question more general.



1 GLENN GODINO

2 Have you received manuals regarding procedures to  
3 follow and other things that would involve acting as a  
4 detective more specifically than the general stuff  
5 that would go to uniform?

6 A I received booklets at trainings that  
7 I've gone to.

8 Q Okay. Did you receive training after  
9 you graduated from the police academy and before you  
10 became a detective from time to time?

11 A Yes, I did.

12 Q Could you just briefly tell me what that  
13 training would have been and when?

14 A I went to -- before I made detective,  
15 they sent me to CIC course, which is a Criminal  
16 Investigation Course.

17 Q And did they provide you with written  
18 materials during that course?

19 A Yes, they did.

20 Q How long was the course?

21 A CIC at that time I believe it was a  
22 three week course.

23 Q Was that a course that you took because  
24 you were in a career path that was going to take you  
25 into investigator and eventually detective?

1 GLENN GODINO

2 A Yes.

3 Q About how long after you joined the  
4 force did you take that CIC course? I know you may  
5 not remember exactly.

6 A I joined the force on June 30th, 1995  
7 and I believe I went to that course, because I got up  
8 to the squad June 1999, I think that October, if I'm  
9 not mistaken, I was sent to the CIC course.

10 Q Let me go back to the time that you were  
11 in the police academy. One of the documents that you  
12 received during that time was something known as the  
13 police student's guide, correct?

14 A I have no idea what that is.

15 Q Okay. I am going to ask you, we talked  
16 a little bit about Brady, I am going to quote you  
17 something and then ask you if you agree with it or not  
18 and no surprises here, this is from the police  
19 student's guide.

20 Under the heading of collecting and  
21 processing evidence and then the subheading Brady  
22 material. It says, "another important area that a  
23 police officer should be familiar with is exculpatory  
24 evidence commonly referred to as Brady material.  
25 Exculpatory evidence is evidence that tends to clear

1 GLENN GODINO

2 someone's guilt. The prosecution is mandated by law  
3 to disclose any evidence that is favorable to the  
4 defense upon request by the defense. Unsolicited  
5 exculpatory evidence must also be disclosed when it  
6 creates a reasonable doubt that would not otherwise  
7 exist. A police officer must bring any such evidence  
8 to the attention of the district attorney. Failure to  
9 do so may jeopardize the prosecution and bring out  
10 judicial sanctions. Remember, a police officer should  
11 gather and preserve as much evidence as possible at  
12 the scene of a crime. The district attorneys will  
13 determine what evidence, if any, is exculpatory."

14 Now that I read that to you, does that  
15 refresh your recollection generally about what Brady  
16 is?

17 MR. THADANI: Objection.

18 A I don't remember that specific quote,  
19 but I understand what that is saying, yes.

20 Q When we were speaking earlier that's  
21 what you referred to as being Rosario or is that  
22 something else?

23 MR. THADANI: Objection.

24 A That would be Rosario.

25 Q Okay. Would you agree that in a much

1 GLENN GODINO

2 shorter version that this is a fair statement of a  
3 police officer's Brady obligations to furnish  
4 defendant now and on a continuing basis all evidence  
5 or information which may tend to exculpate a defendant  
6 either by indication of innocence or by potential  
7 impeachment of a prosecution witness?

8 MR. THADANI: Objection.

9 Q Do you agree with that as a general  
10 proposition?

11 A I don't understand what the term  
12 exculpate means.

13 Q Exonerate.

14 A Can you repeat that again? Sorry.

15 Q Sure. Furnish a defendant now and on a  
16 continuing basis all evidence or information which may  
17 tend to exculpate the defendant either by indication  
18 of innocence or by potential impeachment of a  
19 prosecution witness.

20 A Yes.

21 MR. THADANI: Objection.

22 Q So in practical terms, if during the  
23 course of your investigation you acquire information  
24 that would either tend to exculpate a target of the  
25 investigation or information that would impeach the

1 GLENN GODINO

2 testimony of a witness that's incriminating the  
3 client, you would understand you would have to turn  
4 that over to the district attorney?

5 A Yes, I do.

6 Q When you took that CIC course, there  
7 were particular areas that were covered that included  
8 identification and line ups, show ups, photo arrays  
9 and identifications in general as part of your  
10 training in that area?

11 A I don't know if that's specifically the  
12 CIC course, but yes.

13 Q You were trained in that?

14 A Yeah.

15 Q And more than once over the years that  
16 you have been in the department?

17 A Yes.

18 Q From time to time when there have been  
19 changes with regard to certain things, you receive  
20 fliers as part of your duties as a police officer that  
21 supposedly are going to go into the patrol guide?

22 MR. THADANI: Objection.

23 MR. GROSS: Let me rephrase that.

24 Q Did you, over the course of years that  
25 you have been with the department, receive updates to

1 GLENN GODINO

2 the patrol guide in loose leaf form?

3 A My first patrol guide I had updates, but  
4 that stopped after a while and I couldn't tell you  
5 when so I have gotten updates, but I can't tell you  
6 when the updates stopped exactly.

7 Q Okay. During the period of time which I  
8 gather has been most of your career that you have been  
9 a detective, have you received information from time  
10 to time from the hierarchy as to procedures that had  
11 to be followed on paper?

12 MR. THADANI: Objection.

13 A Yes.

14 Q When there are changes that involved the  
15 work that you did, they would call it to your  
16 attention either at meetings or by information that  
17 was given to you in writing?

18 A I don't know if every single change has  
19 been brought to my attention, but there are some  
20 things that periodically are brought to my attention.

21 Q So for instance, in terms of things like  
22 the use of force when there have been policy changes  
23 in the department, as soon as those changes came down,  
24 you were made aware of them, correct?

25 MR. THADANI: Objection.

1 GLENN GODINO

2 A Regarding the use of force, yes.

3 Q I don't want to take too much time with  
4 this, but very briefly, after you got out of the  
5 police academy, what was the first assignment that you  
6 got in terms of where you were located?

7 A Patrol in the 42nd Precinct.

8 Q Okay. That would have been 1999-2000?

9 A No, I got in -- I went into the academy  
10 June of 1995 so I got out March of 1996.

11 Q And your first assignment was in the 42?

12 A Yeah, patrol.

13 Q Okay. And you told us off the record a  
14 little earlier that you are not in the 42 anymore.  
15 When did you leave the 42?

16 A I was assigned to the 17 squad on May  
17 19th, 2014.

18 Q Is it a fair statement that up to that  
19 change of assignment your entire career as a police  
20 officer has been at the 42?

21 A Yes.

22 Q When, approximately, did you go from  
23 being a uniformed patrol officer to an investigator?

24 A June 14th, 1999.

25 Q When did you make detective? When did

1 GLENN GODINO

2 you get your gold shield?

3 A December 13th, 2000.

4 Q Between June of 1999 and December of  
5 2000, you were doing essentially the same work as the  
6 detective, but without the pay grade, fair statement?

7 MR. THADANI: Objection.

8 A Yes.

9 MR. GROSS: For the record, to counsel,  
10 the detective gave his address as the  
11 precinct. If we need to serve a subpoena,  
12 you will accept on his behalf?

13 MR. THADANI: Yes.

14 Q Since your change of location in terms  
15 of assignment, have your duties as a detective  
16 changed? Do you do different things now?

17 A Still doing investigations, but  
18 different types of investigations.

19 Q Okay. What types of investigations are  
20 you doing since you have been in the 17, just  
21 generally?

22 A Mostly just grand larcenies.

23 Q And is the unit that you are assigned to  
24 there the 17 detective squad?

25 A Yes.



1 GLENN GODINO

2 Q In that detective squad, are the types  
3 of investigations that are done broken down between  
4 various assignments, are there squads for burglaries,  
5 homicides, things like that?

6 A There is only two different units.  
7 There is the regular squad that catches everything but  
8 grand larcenies with checks and credit cards.

9 Q So --

10 A And one unit which is me that catches  
11 all grand larcenies that has to do with credit cards  
12 and checks.

13 Q And you are the only person in that unit  
14 I gather?

15 A Unfortunately, yes.

16 Q Going back to the 42, your current grade  
17 is?

18 A First.

19 Q Congratulations.

20 A Thank you.

21 Q When did you make detective second  
22 grade, about?

23 A December 30th, 2005.

24 Q I take it before that when you were a  
25 detective you were a detective third grade, right?

1 GLENN GODINO

2 A Yeah.

3 Q And while you were an investigator and  
4 before you made detective, did you receive any  
5 specific training with regard to issues that  
6 detectives would be involved in that were specific to  
7 the 42 precinct?

8 MR. THADANI: Objection.

9 A No. All training is based on wherever  
10 you work. I don't think there is specific training  
11 for specific precincts. Not that I am aware of.

12 Q I may have misspoken. What I was trying  
13 to get at was, in the time that you were first  
14 assigned to the 42 both as an investigator and later  
15 as detective, were there specific things that tended  
16 to occur in that precinct rather than generally that  
17 you got specific training in regard?

18 MR. THADANI: Objection.

19 A No, not that I am aware of.

20 Q The 42 back in around 2006, as far as  
21 you are aware, did it have high incidents of any  
22 particular kinds of crimes as compared to generally?

23 A The 42 has a lot of violence compared to  
24 like the 17 Precinct which hardly has any violence.

25 Q Were there things that were done in

1 GLENN GODINO

2 terms of the way the manpower was focused in the 42  
3 that were specific to that precinct in terms of  
4 dealings with the issues of violence?

5 MR. THADANI: Objection.

6 A Not that I am aware of.

7 Q The squad that you were assigned to in  
8 the 42 is the 42 detective squad?

9 A Yes, it was.

10 Q And is that detective squad broken down  
11 into various units?

12 A At the time I was working there, yes.

13 Q Okay. Most of my questions, unless I  
14 say otherwise, are going to be referring to the time  
15 frame of 2006 and thereafter, okay?

16 A Okay.

17 Q Back in 2006, how was the organization  
18 of the detective squad in terms of the kinds of crimes  
19 that were handled?

20 A You have the regular squad that handles  
21 mostly all the cases, homicide, shootings, not  
22 robberies, grand larcenies, certain grand larcenies,  
23 missing persons. Then you have a BRAM unit, which  
24 handles burglaries and robberies and grand larcenies  
25 from the person.

1 GLENN GODINO

2 Q Was there any specific designation  
3 within the 42nd detective squad where particular  
4 detectives were generally getting shooting or homicide  
5 cases as opposed to catching everything that came  
6 along?

7 MR. THADANI: Objection.

8 A The BRAM unit would catch a shooting  
9 only if it was a robbery involved because they did the  
10 robbery so if it was a robbery shooting, the BRAM unit  
11 would get it. Any other dispute, you know, shooting,  
12 the regular squad would get it.

13 Q Generally back in around 2006 and  
14 thereafter, about how many detectives were there in  
15 the 42nd detective squad?

16 A I would have to guess, because, you  
17 know, things change all the time. I would say  
18 approximately twenty to twenty-two.

19 Q Again, I know these are approximations,  
20 but around 2006-2007, how many of those detectives  
21 would have been in the BRAM unit?

22 MR. THADANI: Objection.

23 A I don't remember. Normally it would be  
24 depending on what time there could be two or there  
25 could be four. Depending, because they had at that

1 GLENN GODINO

2 time two people would have had Fridays and Saturdays  
3 off, two people had Sundays and Mondays off. It could  
4 have been two people in that unit or four people,  
5 approximately.

6 Q But the bulk of the detectives were in  
7 the general unit?

8 A The squad.

9 Q Was that the designation, the BRAM squad  
10 and what was the other squad called?

11 A Just the squad.

12 Q Okay. Back in 2006 into 2007, which  
13 unit were you assigned to?

14 A On the squad, regular squad.

15 Q Okay. And during the time that you were  
16 in the 42nd Precinct, were you ever in the BRAM unit?

17 A Yes, I was.

18 Q For how long?

19 A When I first went in on June 14th, 1999  
20 to, I believe, 2003.

21 Q Then you transferred or were transferred  
22 to the general unit?

23 A Yeah.

24 Q Okay. Was that a choice that you made  
25 or was that just the way it was assigned or something

1 GLENN GODINO

2 else?

3 A It gets shifted all the time. You can  
4 be in the squad one time, somebody could retire from  
5 the BRAM, they need somebody to put in the BRAM so  
6 they will put somebody else in. It's just the way it  
7 went at that time.

8 Q Compared to the general squad, was the  
9 BRAM unit considered to be a favorable or unfavorable  
10 assignment or something else?

11 MR. THADANI: Objection.

12 A It wouldn't be either one. Normally  
13 when newer detectives come into the squad, they put  
14 them in the BRAM because you are not handling the  
15 heavier cases so they want you to start there. And  
16 then after a while if somebody retires and there is  
17 room, they push you into the regular squad and then  
18 the next new person comes in, normally if they are  
19 brand new, they would go into BRAM. And if they need  
20 somebody in the squad, they can put somebody straight  
21 in the squad, it doesn't have to be put into BRAM.

22 Q But generally people would go through  
23 the BRAM before they wound up in the squad if it could  
24 be done?

25 A Generally, yes.

1 GLENN GODINO

2 MR. THADANI: Objection.

3 Q Have the confines of the 42 changed at  
4 all? The borders, as far as the time you were there,  
5 did they always remain the same?

6 A Yes, they remained the same.

7 Q What are the boundaries of the 42  
8 Precinct?

9 A They go from the Cross Bronx Expressway  
10 from Webster Avenue to the Sheridan Expressway and  
11 then down the Sheridan Expressway to Westchester  
12 Avenue, then across Westchester -- a small part of  
13 Westchester Avenue and it cuts down 167 Street to, I  
14 believe, Prospect Avenue. Then it goes south on  
15 Prospect Avenue to the north side of 160th Street. It  
16 would go up 160th Street all the way to Cortland  
17 Avenues.

18 Q The boundaries are irregular?

19 A Yeah, it's just cut out.

20 Q The adjoining precincts to the 42 are  
21 which?

22 A To the west, it's the 44. To the north,  
23 it's the 48. To the east is the 43. And the  
24 southeast the 41 gets a part of it and the southwest,  
25 the 40 gets a part of it.

1 GLENN GODINO

2 Q Back in 2006 and 2007, how were the  
3 detective's shifts organized?

4 MR. THADANI: Objection.

5 MR. GROSS: Let me withdraw the  
6 question.

7 Q Were the shifts organized the same for  
8 all the detectives regardless of whether they were in  
9 the general squad or the BRAM squad?

10 A I believe they were separate at that  
11 time.

12 Q So for the general squad, how were the  
13 shifts arranged?

14 MR. THADANI: Objection.

15 A The general squad has the four and two  
16 chart. We would do two 1600 by 0100s. And then two  
17 0800 by 1600s. And then two days off.

18 Q So in layman's terms, can you repeat  
19 what you said?

20 A Two 4:00 to 12:00 say. It's 4:00 to  
21 12:00. Two 8:00 to 4:00 and then two days off.

22 Q The days off and the shifts would be  
23 scattered so there was always coverage between the  
24 various detectives?

25 MR. THADANI: Objection.



1 GLENN GODINO

2 A Yes.

3 Q Back in 2006 and 7, how many supervisors  
4 were there in the detective squad?

5 A The 42 when I was there, I went through  
6 thirty something supervisors. They couldn't keep a  
7 supervisor so I couldn't narrow it down to at least  
8 one. There was sometimes three so I don't remember  
9 what year how many supervisors, but between one and  
10 three.

11 Q Was there a particular designation  
12 regardless of who the person was who was the commander  
13 of the 42 detective squad at any given moment?

14 A Yes.

15 Q Would that generally be a lieutenant?

16 A Yes, but there was times that I only had  
17 -- when I first got up there, there was a sergeant who  
18 was the CO and still to this date there are precincts  
19 who have sergeants that are COs. Generally, yes, it  
20 would be a lieutenant, but there are times when they  
21 don't have a lieutenant, that they make the sergeant a  
22 squad commander.

23 Q The period of late 2006 into 2007 when  
24 the events took place in this investigation, do you  
25 remember who the squad commander, detective squad

1 GLENN GODINO

2 commander was?

3 A I have no idea.

4 Q Beside the squad commander, do you  
5 remember how many other supervisors there were in the  
6 detective squad?

7 A I don't remember at that time.

8 Q Okay. Other than the squad commander,  
9 would the detective supervisors go into the field or  
10 did they generally stay in the precinct?

11 MR. THADANI: Objection.

12 A They generally stay in the precinct  
13 unless a major case comes and then they would go into  
14 the field.

15 Q Okay. When you created paperwork in  
16 your job as a detective back in 2006 and forward, some  
17 of that paperwork was required to be co-signed by a  
18 supervisor?

19 A Yes.

20 Q So when a supervisor would co-sign a  
21 document that you created, would that be whatever  
22 supervisor was on duty at that time or were they  
23 specific to you or something else?

24 A It would most likely be whoever was on  
25 duty at that time. It varies because you can submit a

1 GLENN GODINO

2 report and the supervisor might not sign off on it for  
3 a day or two so --

4 Q If I mentioned a Sergeant Lopuzzo  
5 (phonetic), would that have been somebody that was one  
6 of your supervisors back in 2006-2007?

7 A He was a supervisor from the 40th  
8 Precinct, but it wasn't my supervisor.

9 Q He wasn't from the 42?

10 A No.

11 Q How would it be that a supervisor from  
12 another precinct would sign off on paperwork you  
13 created?

14 MR. THADANI: Objection.

15 A If you have a large case, two ways. If  
16 we only had one supervisor, sometimes they would send  
17 another supervisor from another precinct to help out  
18 or he could have had the coverage that day. That  
19 means, we don't have a supervisor and he would cover  
20 anything that goes wrong that's major so he would come  
21 to a precinct that had, you know, somewhat of a major  
22 incident to sign off on.

23 Q Other than supervisory personnel, would  
24 investigations for crimes that occurred in the 42 be  
25 investigated routinely by detectives from other

1 GLENN GODINO

2 precincts?

3 MR. THADANI: Objection.

4 A Just major incidents usually.

5 Q What qualifies as a major incident, the  
6 severity of the crime or other factors?

7 A Usually the severity. Homicides,  
8 shootings. If there was a young child involved, you  
9 know.

10 Q I am going to refer to this  
11 investigation as the Caldwell investigation. You  
12 follow what I am talking about, correct?

13 A Yes, yeah.

14 Q Regarding the Caldwell investigation, to  
15 your recollection, were detectives from other  
16 precincts directly involved in doing the fieldwork in  
17 this case, if you remember?

18 A Yes.

19 Q Do you remember from which precincts  
20 those detectives would have come in from?

21 A I know homicide squad came to help with  
22 this case.

23 Q Okay. So you mentioned the homicide  
24 squad. Tell me a little bit about how that's  
25 organized with reference to the homicide squad you

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2 were talking about just a moment ago?

3 A Can you repeat that? I don't understand  
4 the question.

5 Q You said the homicide squad helped out.  
6 Where was that homicide squad assigned?

7 A At the detective bureau at 1086 Simpson  
8 Street.

9 Q So the homicide command was a  
10 borough-wide command?

11 A Yes.

12 Q Was there a procedure involved where  
13 detectives from the precinct would routinely ask for  
14 involvement from the homicide squad other than if it  
15 was a homicide?

16 MR. THADANI: Objection.

17 A Yes. If you had something that could  
18 turn into a homicide, if someone was likely to die,  
19 then they would come out and help out.

20 Q So in every case where somebody was  
21 either likely to die or there was a homicide confirmed  
22 would the homicide squad get involved in all of those  
23 cases borough wide, to your knowledge?

24 MR. THADANI: Objection.

25 A I don't know if they've gone to every

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2 single case, but they would get involved in cases like  
3 that.

4 Q Obviously if the case got closed  
5 immediately they would not get involved, but in cases  
6 where there was an ongoing investigation, would the  
7 homicide squad routinely get involved?

8 MR. THADANI: Objection.

9 A If it looked like it was going to turn  
10 into a homicide, they would get involved.

11 Q Do you have a specific recollection  
12 regarding this case as to how and when the homicide  
13 squad became involved?

14 A No.

15 Q Okay. As a general procedure, what  
16 would you expect would happen in a case such as this  
17 where Mr. Caldwell eventually passed away, how would  
18 the homicide squad get involved?

19 A Somebody from the detective squad or  
20 wherever the incident happened would call homicide and  
21 tell them we either had a homicide or we have somebody  
22 who is likely to die.

23 Q Would that be the function of one of the  
24 detectives who caught the case or would that be a  
25 supervisor that did or somebody else?

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2 A Either one.

3 Q In an attempt to save a little bit of  
4 time, I am going to ask you to agree with some of the  
5 things that I am about to refer to. If I left  
6 something out or if you disagree with it, please let  
7 me know. Otherwise, if you can tell me whether it's  
8 accurate or not, okay?

9 A Okay.

10 Q Okay. Would you agree that the duties  
11 and responsibilities of a homicide detective include  
12 investigating current homicides as well as exploring  
13 leads on older, active homicide investigations?

14 MR. THADANI: Objection.

15 A Yes, I would agree with that.

16 Q More specifically, would you agree that  
17 a homicide investigation typically entails  
18 interviewing witnesses, gathering physical evidence,  
19 requesting physical evidence be examined by other  
20 entities such as the police lab, medical examiner's  
21 office, ballistics, tracking down and apprehending  
22 suspects and testifying at any subsequent proceedings?

23 A Yes.

24 Q Okay. Is there anything in that list of  
25 functions that I neglected that comes to mind?

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2 A No, I think you covered everything.

3 Q Okay. When a shooting takes place where  
4 there is either a homicide or there is a likely to  
5 die, is the usual response by the uniformed personnel  
6 in the field?

7 MR. THADANI: Objection.

8 A Yes.

9 Q And when it's determined by the officers  
10 in the field that this is either a victim who was  
11 likely to die or has already died, was there some  
12 procedure in place for the uniformed patrol officers  
13 to notify the detective squad?

14 A Yes.

15 Q Tell me how that's done or was done back  
16 in 2006-2007 in the 42?

17 A They would just call up to the squad and  
18 say they had somebody either shot, you know, DOA or,  
19 you know, homicide. It doesn't have to be a shooting,  
20 it could be somebody was stabbed.

21 Q When such a notification was made, was  
22 there a standard response either in a homicide or  
23 likely to die situation as to who from the detective  
24 squad and other units would respond?

25 A I don't know if there's a standard



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2 response, but you would have the person who is getting  
3 the case.

4 Q Right.

5 A Normally the people who are working with  
6 that person. Supervisors that were working. And if  
7 you didn't have many people in the office at that  
8 time, you would call other commands to see if they  
9 could send other people to help.

10 Q In that kind of a scenario with a  
11 deceased or likely to die, approximately, how many  
12 detectives would respond if they were available?

13 MR. THADANI: Objection.

14 A It's different at all times. You could  
15 have an additional three, four different detectives.  
16 You could have eight.

17 Q Going back to my general statements  
18 about police procedures. Would you agree that the  
19 first document that the detective squad would become  
20 aware of with regard to an investigation in a death or  
21 likely to die would be a complaint report created by  
22 the patrol units who responded?

23 MR. THADANI: Objection.

24 A Complaint report should be the first  
25 document. It's not always the first document.

1 GLENN GODINO

2 Q Now, based on your experience, are the  
3 documents that are created by the uniformed patrol  
4 officers assigned sequential case numbers?

5 A Report numbers?

6 Q Yes.

7 A Report numbers, yes.

8 Q There is also a sequential number  
9 assigned by the detective bureau that would be a  
10 different number, correct?

11 A Yes. A case number would be assigned to  
12 that report number.

13 Q Okay. Once a case number is assigned to  
14 a case like the Caldwell case, would a case folder  
15 then be created?

16 A Yes.

17 Q The case folder would be created, I  
18 presume, after the initial visit to the scene,  
19 correct?

20 A Yes.

21 Q So at the time that the lead detective  
22 would come back to the precinct, would he be the one  
23 to create the case folder?

24 MR. THADANI: Objection.

25 A He could be.

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2 Q Okay.

3 A Doesn't have to be.

4 Q Well, tell me generally how the  
5 procedure existed in the 42 Precinct back in 2006 and  
6 7 of a case folder being created in a homicide case?

7 A Once a complaint report was entered into  
8 the computer and a report number is generated, then  
9 anybody in the office could assign the case number.  
10 Whatever the next case number is.

11 Q Okay. And based on that case number  
12 that's been assigned, is a physical case folder then  
13 started for that case?

14 A It could be. It doesn't have to be.

15 Q Okay. At some point, assuming the case  
16 is not solved immediately or close to that, would a  
17 case folder be created?

18 A Yes.

19 Q And would you agree that once that case  
20 folder is created, the various documents that are  
21 generated in connection with the homicide  
22 investigation, that's where they are supposed to go?

23 A Yes.

24 Q Would you agree that all the significant  
25 documents regarding that particular investigation are

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2 supposed to go into that case folder?

3 MR. THADANI: Objection.

4 A Yes, they are.

5 Q The case folder physically, what does it  
6 look like?

7 A Well, there is --

8 Q Again, my questions refer to the 42 back  
9 in 2006 and forward.

10 A Individual case folders could be  
11 different colors. It's like sort of a cardboard  
12 folder and you would put it into that. But in cases  
13 of a non-fatal shooting or homicide, you would put  
14 those individual case folders into a larger folder.

15 Q Like a box?

16 A Not a box, but just like a brown folder  
17 that's large enough to hold, you know, case folders  
18 and other little legal files.

19 Q Is that larger folder compartmentalized?

20 A No.

21 Q It's just a bigger --

22 A Just a bigger space to put everything  
23 in.

24 Q The case folders that were generated in  
25 the 42 Precinct back in that time frame, was there

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2 anything on the outside of those folders that was  
3 imprinted on it where you could enter information?

4 A Yes.

5 Q What kind of information was on the  
6 outside of the case folder, the boxes to fill in on  
7 the outside of the case folder?

8 MR. THADANI: Objection.

9 A Name, report number, case number,  
10 location, detective assigned, assistant detective,  
11 crime scene, ME.

12 Q By ME, you mean the ME that caught the  
13 case?

14 A Medical examiner's office.

15 Q The particular ME that caught the case?

16 A Yes. There might be a couple other  
17 captions, I just can't recall the other ones.

18 Q Back in that time frame, was there a  
19 document either by the name of an index sheet or  
20 something that corresponded to that that would be kept  
21 as a list of the documents that were created in  
22 connection with that investigation?

23 MR. THADANI: Objection.

24 A I don't remember if indexes were done  
25 back then. The newer computer systems they are in now

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2 automatically print out.

3 Q An index sheet?

4 A An index sheet. But I just can't  
5 remember if index sheets were used at that time.

6 Q Okay. Based on your experience with  
7 index sheets, there would be a list of documents, some  
8 of the documents created that would be assigned  
9 numerical numbers within that category? For instance,  
10 DD5s are typically numbered?

11 MR. THADANI: Objection.

12 A Yes.

13 Q Back in the 42 Precinct in 2006, was it  
14 the custom of the detective squad when DD5s were  
15 created to number them numerically in the order they  
16 were created?

17 A Yes.

18 Q For the record, what is a DD5?

19 A It's just a --

20 Q I am sorry. Complaint information is  
21 the name inscribed on it, correct?

22 A Yes.

23 Q In that case folder, would records  
24 outlining the various investigative steps taken be  
25 routinely put into that case folder and would those

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2 include things like interviews of witnesses, computer  
3 checks, identification procedures, arrests, requests  
4 for subpoenas and other documentation, depending on  
5 what investigative steps were necessary?

6 MR. THADANI: Objection.

7 A Yes, they would.

8 Q In cases such as this one, the folders  
9 are kept track of by the names of the victims,  
10 correct? Not by the suspects or accused names, is  
11 that a fair statement?

12 A Yes, it is.

13 Q What name would have appeared on the  
14 case folder involving the Caldwell shooting; would it  
15 have been Mr. Caldwell's name or would it be Lissette  
16 Ayala's name, the other victim? Would her name have  
17 been included as well?

18 A They would each have their own folder.

19 Q There would be a separate folder created  
20 for both?

21 A Yeah. A separate smaller folder.

22 Q When you say a separate smaller folder,  
23 would those two folders then go inside that larger  
24 folder you mentioned before or would they be kept  
25 separate?

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2 A They should go into the larger folder.

3 Q In this case, do you have a recollection  
4 that this investigation involved using one of those  
5 larger folders?

6 A Yes, I do. Yes, it was.

7 Q Okay. And the information you told me  
8 about what was on the outside of the folder, you were  
9 referring to the larger folder?

10 A I was referring to the smaller one, but  
11 some of that information that's on the smaller folder  
12 could be placed on the outside of the larger folder.

13 Q Okay. Would you agree that anything  
14 that occurred that was significant to an investigation  
15 should be reflected in a record that wound up in the  
16 case folder?

17 MR. THADANI: Objection.

18 A Yes.

19 Q As a general proposition, would you  
20 agree that records that are maintained in a case  
21 folder are supposed to indicate which detective or  
22 other police personnel created them?

23 A Yes, they do.

24 Q Would the information that would be on  
25 the outside of the case folder be more detailed on the



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2 larger case folder or there would be more information  
3 on the smaller ones that went inside it?

4 A It all depends on what detective put on  
5 what, you know, case.

6 Q I am sorry. I misspoke. I meant before  
7 it's filled out.

8 MR. GROSS: Let me withdraw that.

9 Q The outside of these case folders are  
10 imprinted with categories of information that can be  
11 either handwritten in them by the detective, correct?

12 A Only on the small cases. The large one  
13 is blank.

14 Q Whatever information you choose to put  
15 on that is done without any boxes to indicate what's  
16 supposed to be done?

17 A Yeah. What was done was you draw boxes  
18 and you just put the information in. There is no  
19 preprinted questions on the outside of the larger  
20 folder.

21 Q Okay. So the preprinted questions that  
22 would be on the outside of the two folders that were  
23 created in this case, Ayala and Caldwell, would that  
24 information include all of the detectives involved  
25 assigned to this case besides the lead detective?

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2 A No.

3 Q Is that case folder involving the  
4 Caldwell and Ayala investigation still in the 42  
5 Precinct, to your knowledge?

6 A No, it is not.

7 Q Do you know where it is now?

8 A Yes, I do.

9 Q Where is it?

10 A It's at the law department.

11 Q And to your knowledge, the case folder  
12 that is at the law department -- when you say law  
13 department, you are talking about the law department  
14 maintained by the corporation counsel who is defending  
15 you in this case, correct?

16 A Exactly.

17 Q Do you know when that case folder was  
18 either given to or requisitioned by the law  
19 department?

20 A Not exactly.

21 Q Can you give me your best approximation?

22 MR. THADANI: Objection.

23 A It would have had to be sometime after  
24 Kenny was released, but I have no idea when that would  
25 have went to them.

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2 Q If I suggested to you that it would have  
3 been sometime after the lawsuit in this case would  
4 have been started, does that refresh your recollection  
5 as to when that probably would have occurred?

6 MR. THADANI: Objection.

7 A Yes.

8 Q And the answer would be it would be  
9 after the lawsuit was instituted?

10 A Yes, but I don't know when the lawsuit  
11 was instituted.

12 Q You don't know exactly when that was, I  
13 understand that.

14 A Yeah.

15 Q When that case folder was provided to  
16 the law department in this case, to your knowledge,  
17 was all the documentation that existed with regard to  
18 this investigation within that case folder?

19 MR. THADANI: Objection.

20 A No, it was not.

21 Q What was not in there anymore?

22 A I believe there was some DD5s that were  
23 missing. And it might have been an identification  
24 photo that was missing. I know it wasn't a complete  
25 folder.

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2 Q Do you know of your own knowledge  
3 whether or not, and I will go back to this in detail  
4 later, whether or not the case file involving this  
5 investigation of Ayala and Campbell was requisitioned  
6 by the district attorney's office?

7 A It's Caldwell. And what was your  
8 question? You said Campbell.

9 Q I am sorry. Do you know of your own  
10 knowledge whether or not that folder was ever  
11 requisitioned by the district attorney's office?

12 A Given to them?

13 Q Yes. Physically?

14 A Yes, it was.

15 Q To your knowledge, was that case folder  
16 when it was given to the district attorney, were the  
17 originals given or was the case folder copied and  
18 turned over to them or something else?

19 A At first it was copied, but then the  
20 whole original case folder was given to them.

21 Q And do you happen to remember, again, I  
22 will get back to this, which district attorney  
23 requisitioned the folder?

24 A Yes. Bruce Burn, Birns.

25 Q To your knowledge, if you know, when was

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2 that case folder returned to the 42 Precinct?

3 MR. THADANI: Objection.

4 Q If not by a date, by an event.

5 A It was at one time a Dan McCarthy  
6 inherited the case from the district attorney's  
7 office. He passed away. But when we thought this  
8 case was starting to -- going to go to trial, I went  
9 to go over the case with him. That's when I finally  
10 saw the case file and a few years have gone by since  
11 then, but I don't recall that date.

12 Q Okay. As far as the case file being  
13 returned to the precinct, to your knowledge, did that  
14 happen after the case was dismissed against Ken  
15 Creighton?

16 A I don't know if it ever came back to the  
17 42nd Precinct. I think it was held onto by the  
18 district attorney's office and I went and picked it up  
19 after the lawsuit when the law department was  
20 requesting the case file. I believe I picked it up  
21 from ADA Gottlieb.

22 Q Okay. ADA Gottlieb is a supervisor in  
23 the DA's office as opposed to a personal --

24 A No, I don't think -- she was assigned  
25 that case at that time. She was the last one to be

1 GLENN GODINO

2 assigned the case. I don't know if she is a  
3 supervisor now, but at that time I believe she was  
4 just --

5 Q A regular?

6 A A regular ADA.

7 Q Okay. As far as your recollection goes,  
8 the case file remained, the original case file  
9 remained for some period of time with the district  
10 attorney's office?

11 A Yes.

12 Q Can you approximate for me about when  
13 the original file went over to the DA's office? I  
14 don't care whether it's by date or by a particular  
15 event that would jog your memory about it.

16 A It had to be not too long after the  
17 arrests were made. You know, within -- I am only  
18 approximating here, within a month or so after. Once  
19 all the DD5s were done and everything was into the  
20 case, I provided everything to the district attorney's  
21 office and handed them the folder.

22 Q Again, I will go over this in detail in  
23 a moment, but the first person that was arrested in  
24 connection with this case was Ken Creighton, correct?

25 A Yes, he was.

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2 Q And Dior was arrested sometime  
3 thereafter?

4 A Yes, he was.

5 Q When Dior Creighton was arrested, was  
6 the case marked closed at that time or did it remain  
7 open?

8 A I would think it would still be open.

9 Q When the district attorney's office  
10 either requisitioned the file in writing or you  
11 brought it over, however that happened, was a copy  
12 made of all the documents that were contained in that  
13 file before the originals were given to the district  
14 attorney?

15 A I am not sure if a complete copy of the  
16 whole folder was given prior to the whole folder. I  
17 don't have an answer for that.

18 Q I didn't follow that. The original  
19 folder was what the DA got, not a copy, right? He got  
20 the original documents, however many he got?

21 A I don't know. I just don't have a  
22 recollection if I gave him partial of the documents,  
23 you know, or the whole thing at once. I just don't  
24 recall.

25 Q Okay. When you gave it to him, however

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2 quantity of documents you gave, you gave him  
3 originals, not copies you provided, is that a fair  
4 statement?

5 A I don't know.

6 Q What I am trying to get at is, who kept  
7 the copies and who kept the originals?

8 A I understand what you are saying, but I  
9 don't remember if I gave him copies of what I had,  
10 then gave him the other folder or if they got  
11 everything together. I just don't remember.

12 Q But at some point during the time that  
13 this investigation was being conducted, the district  
14 attorney's office got the original folder, whether it  
15 happened in one shot or in more than one event, it did  
16 happen, correct?

17 A Yes.

18 Q As far as you are aware of back in the  
19 time frame we are discussing, if a record was created  
20 by a detective that wound up in the case folder, it  
21 was supposed to have either been signed by him or  
22 indicated in some fashion that he created it, correct?

23 A The name of the investigator would be  
24 typed at the bottom of the report.

25 Q Okay.



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2 A Only -- I don't believe we would sign  
3 that particular --

4 Q I am not worried about the signature, I  
5 misspoke. What I am saying is every document that  
6 wound up in the case folder would have been a document  
7 that would identify who it was that created it?

8 MR. THADANI: Objection.

9 A Yes.

10 Q During an investigation, written notes  
11 are made by detectives generally?

12 A Yes.

13 Q Are those notes that are created during  
14 the investigation stored in the case folder when the  
15 investigation is ongoing or are they kept on the  
16 person of the detective or something else?

17 MR. THADANI: Objection.

18 A If you are going out into the field to  
19 do an investigation or whatever you are going to do,  
20 you would carry that note pad with you. But when you  
21 come back, it would end up back in the folder.

22 Q And the reason it goes back into the  
23 folder is so that if anybody was in need of  
24 information regarding that, he would have access to  
25 the handwritten notes as well?

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2 A Correct.

3 Q Is it a fair statement that other than  
4 the times where field investigations were actually  
5 taking place by you or other detectives involved in  
6 this case, those notes should have been in the case  
7 folder?

8 MR. THADANI: Objection.

9 A Yes.

10 Q You are aware that when a case comes  
11 into the hands of a district attorney those notes are  
12 sometimes very important information that has to be  
13 made available to the district attorney for a variety  
14 of reasons?

15 MR. THADANI: Objection.

16 A Yes.

17 Q You are aware that on some occasions,  
18 both in civil or criminal litigation, those notes may  
19 be required to be turned over or the notes or copies  
20 of them may be required to be turned over to  
21 third-parties, correct?

22 MR. THADANI: Objection.

23 A Yes.

24 Q In the 42 Precinct back in 2006 and  
25 2007, did those notebooks have a name that they were

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2 officially or unofficially known by? Like, spiral  
3 notebooks?

4 A Yes, it could be spiral notebooks.

5 Q And was there a uniform notebook that  
6 was carried by each detective in the 42 Precinct in  
7 that time frame that was issued by the department or  
8 did they acquire their own or something else?

9 A It was issued by the department, but  
10 there was two types. They have larger ones and then  
11 small, skinny ones.

12 Q Okay. Other than the size of them, is  
13 there anything different about them in terms of any  
14 information that would be contained in the notebook  
15 itself?

16 A No. All the notebooks come with just  
17 lines.

18 Q So you make entries in them?

19 A Correct.

20 Q Does the notebook, whichever one that's  
21 being used, does it have a place on the notebook  
22 anywhere where the date that a document was or part of  
23 the notebook was created would be inscribed?

24 A Not a specific location.

25 Q As a general proposition when you made

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2 entries into these spiral notebooks, did you date the  
3 entries?

4 A I sometimes do and unfortunately,  
5 sometimes don't.

6 Q As you sit here right now, do you  
7 remember, other than Detective Roberts, who is a  
8 detective in this case, the names of any other  
9 detectives who actively assisted in this  
10 investigation?

11 MR. THADANI: Objection.

12 A I believe Detective Schwartz from Bronx  
13 Homicide was assigned this case with me and Detective  
14 Claude O'Shea from the Bronx Homicide was on this case  
15 also. I don't know if he was specifically assigned  
16 the case. He might have been just helping out  
17 Detective Schwartz.

18 Q What kind of things do you remember the  
19 two homicide detectives doing with regard to this  
20 investigation, which types of activities?

21 A I believe Detective O'Shea recovered a  
22 videotape from a bodega.

23 Q He is one of the homicide detectives?

24 A Yes.

25 Q To your knowledge, was Detective O'Shea

1 GLENN GODINO

2 somebody who had technical training in handling that  
3 kind of material?

4 MR. THADANI: Objection.

5 A I don't know if he had training.

6 Q Again, I will come back to this, but the  
7 video that was recovered from the bodega, was that on  
8 a disk or was it on a tape?

9 A It was a VHS tape.

10 Q VHS tape. Do you know whether or not  
11 the tape itself was removed from the recording  
12 equipment by Detective O'Shea or by the bodega owner?

13 A I have no idea. I wasn't there when  
14 they got the tape.

15 Q And you don't have any notation or any  
16 recollection about how that was done?

17 A No, I do not.

18 Q By the way, the bodega owner we are  
19 talking about is Mr. Terab?

20 A What's his first name? It starts with  
21 an A, I think.

22 Q Fawaz.

23 A I believe that's his name.

24 Q Do you have a recollection as to how  
25 long after the shooting took place that the tape was

1 GLENN GODINO

2 recovered by Detective O'Shea?

3 A I am not sure.

4 Q If I indicated to you that the shooting  
5 took place on the evening of December 26th, 2006,  
6 would you agree with that?

7 A Yes.

8 Q Do you know whether or not that tape  
9 came into the possession of the police department  
10 before Mr. Terab was interviewed in connection with  
11 this case?

12 A I don't know if Detective O'Shea  
13 interviewed him at that store at that time.

14 Q You interviewed Mr. Terab at some point,  
15 did you not?

16 A Yes, I did.

17 Q At the time that you interviewed Mr.  
18 Terab, was that tape in the police department's  
19 possession in the 42 Precinct?

20 A Yes, it was.

21 MR. GROSS: For the record, I am going  
22 to ask that, I will formalize this as well, I  
23 am going to call for the production of the  
24 original case folder right now. Is it here  
25 physically?

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2 MR. THADANI: It's not here physically.  
3 You can put that in writing and we will  
4 respond accordingly.

5 MR. JAFFE: For the record, we have put  
6 it in writing and we did ask that it be  
7 provided and produced for the purposes of the  
8 deposition today. I believe we are entitled  
9 to question the witness on the original  
10 folder.

11 We could call over to Judge Freeman and  
12 ask for it to be produced for purposes of  
13 this deposition unless you are going to  
14 re-produce Detective Godino once we get the  
15 original folder in our possession. You have  
16 two choices. We get a chance to question him  
17 as to the original file.

18 MR. GROSS: In any case, one of the  
19 things we were clearly not provided with in  
20 this case and I am not sure whether we  
21 specifically asked for it, but I believe it  
22 was included generally, is the outside of  
23 those two case folders which contain  
24 information that we have not otherwise had  
25 access to. So I am making a formal request

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2 right now that as soon as reasonably  
3 possible, whatever happens with the  
4 production of the original folders, that the  
5 outside of those two case folders be copied  
6 and sent to us.

7 MR. THADANI: Okay. You can put the  
8 request in writing and we will respond  
9 accordingly.

10 With respect to the contents of the  
11 file, my understanding is they were copied  
12 and produced. To the extent the outside of  
13 the case folders weren't produced, I will  
14 check that and again, put the request in  
15 writing. To the extent they weren't, we will  
16 have them copied and produced.

17 MR. JAFFE: What do you want to do about  
18 the original? We are supposed to have it  
19 here. We are supposed to be able to question  
20 him as to the original file.

21 MR. THADANI: It's my understanding that  
22 the file has been produced maybe perhaps with  
23 the exception of the outside of the case  
24 folders. I have to check that.

25 MR. JAFFE: It's right across the



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2 street.

3 MR. GROSS: So the record is clear, we  
4 are not being obstructive here. One of the  
5 problems we have had with the records that  
6 were produced is on any number of particular  
7 occasions, the copying process, especially if  
8 the documents are on colored paper, or other  
9 things, don't come out clear so they are not  
10 readable.

11 There is a multitude of documents that  
12 were produced in this case that the only way  
13 we are going to make any sense at all about  
14 what's on them is to actually see them. For  
15 that reason alone, I think it's only fair we  
16 have the original documents here when  
17 there is a question as to whether our copies  
18 accurately reflect what's on them or not.

19 MR. THADANI: I want to clarify. So you  
20 are asking me to bring the files over and you  
21 will inspect them and the questioning will  
22 take place with respect to those files today,  
23 is that what you are saying?

24 MR. JAFFE: Yeah.

25 MR. THADANI: I can go over and get them

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2 when we find a suitable time for a break. If  
3 you want to do that now --

4 MR. GROSS: I can question without it  
5 right now. I have a fair number of questions  
6 I can do now without the documents in  
7 question so if you want to get those done,  
8 then we can take a break and do that.

9 MR. THADANI: It's your deposition.

10 MR. GROSS: Sure, I am happy to do it  
11 that way.

12 Q Do you happen to know if Detective  
13 O'Shea is still employed by NYPD?

14 A He is not. He is retired.

15 Q Do you have an approximate date about  
16 how long ago he retired, if you know?

17 A He's probably retired, and I am  
18 guessing, I would say around seven years. Six years,  
19 maybe.

20 Q What about Detective Schwartz, the other  
21 homicide detective?

22 A He is long gone. He is retired.

23 Q The way the case file was setup, was  
24 that part of your duties as the lead detective in this  
25 case?

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2 A Yes.

3 Q And I think we got this covered, but let  
4 me go back for a moment. The way you caught this  
5 particular case, was that based on your just being the  
6 next one up or you were singled out for the assignment  
7 by a supervisor or some other way?

8 MR. THADANI: Objection.

9 A Just being the next one up.

10 Q And in the 42 Precinct back in 2006 and  
11 7 that was typically the way cases were caught, just  
12 whoever was next up in line?

13 MR. THADANI: Objection.

14 Q Or as they sometimes say, the next one  
15 in the barrel?

16 A Just for homicides and shootings.

17 Q Okay. So in homicide and shooting  
18 cases, whoever was next in line to catch the case  
19 would catch the next event?

20 A Correct.

21 Q Is it a fair statement that each time a  
22 witness was interviewed with regard to this particular  
23 investigation there would have been documentation  
24 created for that interview?

25 MR. THADANI: Objection.

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2 A No, there was not.

3 Q Witnesses got interviewed in this case  
4 in a variety of ways. The first one was generally by  
5 canvas, correct?

6 A Yes.

7 Q And after the shooting took place, a  
8 canvas took place in connection with the shooting  
9 itself?

10 A Yes, it did.

11 Q And a variety of ways to find people to  
12 talk to were used including 911 calls, if they  
13 existed?

14 A Yes.

15 Q Okay. How else did you determine on  
16 this particular investigation where and how to canvas?

17 A You start from where you think the  
18 incident happened and you just branch out from there.

19 Q Okay. The people that were doing this  
20 canvas, were they all detectives or were some  
21 uniformed personnel involved in it as well?

22 MR. THADANI: Objection.

23 A I don't know if any uniformed people  
24 knocked on doors.

25 Q Typically in 2006-7 in the 42 Precinct,

1 GLENN GODINO

2 were uniformed officers generally used to do  
3 canvassing to find potential witnesses?

4 MR. THADANI: Objection.

5 A Sometimes they would.

6 Q Okay. You have no recollection about  
7 whether they were in this case or not?

8 A I have no recollection.

9 Q But when a canvas is done, was part of  
10 the procedures back in 2006-2007 in the 42 Precinct to  
11 record on particular documents who was questioned and  
12 who the questioner was, correct?

13 MR. THADANI: Objection.

14 A At least who was questioned. Not  
15 necessarily who was asking the question.

16 Q So would it be a fair statement that  
17 presumptively a person who was contacted in connection  
18 with this case, that their name should be reflected in  
19 that case folder somewhere?

20 MR. THADANI: Objection.

21 A It doesn't have to be.

22 Q In what situations would it not be?

23 A If you spoke to somebody and they had,  
24 if they were just saying, and this is hypothetically,  
25 I was just walking by, I didn't see anything and they

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2 would keep walking, that's something you wouldn't  
3 document.

4 Q But if you went to a particular location  
5 and knocked on a door or you stopped somebody and  
6 actively questioned them about what they knew, that  
7 would be recorded and should be in the case folder  
8 somewhere, right?

9 MR. THADANI: Objection.

10 A It should be, but I can't guarantee it  
11 always happens.

12 Q Okay. Routinely, once the names of the  
13 victims in the shooting case are ascertained, are  
14 computer checks done on them?

15 MR. THADANI: Objection.

16 A Yes.

17 Q And that's standard procedure in a  
18 homicide investigation in the 42 Precinct?

19 A It should be.

20 Q One of the things that that computer  
21 check would determine is any prior criminal history,  
22 that's part of what the computer check would involve?

23 A Yes.

24 Q What other kind of information does the  
25 computer check on the victims attempt to ascertain?

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2 A Their pedigree, the names, date of  
3 births, addresses, if they have multiple addresses.

4 Q And what kinds of databases are checked  
5 to get that information by the computer?

6 A Back in 2006-2007 it was much limited  
7 than it is now.

8 Q I know there has been some changes, but  
9 back in 2006-2007 when those computer checks are run,  
10 can you give me the names of the databases and what  
11 information they reflect? Like, if a fingerprint was  
12 done or that type of stuff, what kind of databases  
13 would have been run back in 2006-2007?

14 (Whereupon, Mr. Kenneth Creighton came  
15 into room.)

16 A There used to be a program called BADS  
17 (phonetic).

18 Q That's what?

19 A You would be given the person's arrest  
20 record. I think it was WNAM at the time. That's  
21 another database, I think that covered warrants at the  
22 time. I can't remember. They switched the names to  
23 check people for warrants so I don't remember if WNAM  
24 was still around at that time or it was switched to  
25 another name.

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2 Q Let me ask you just to interrupt for a  
3 moment. In the databases that were available then,  
4 would the existence of an I-card be something that  
5 would show up when you did the first routine checks?

6 A I believe at that time -- I am not sure,  
7 but they should have shown up at that time.

8 Q You mentioned warrant checks. Those  
9 would certainly have come up?

10 A Yes.

11 Q Just so we understand, what exactly is  
12 an I-card?

13 A I-card is an investigative card that if  
14 you are looking to either speak to somebody who might  
15 be a suspect or you have probable cause to arrest that  
16 person, you would issue an I-card so if that person is  
17 stopped, arrested, we would, the investigator would be  
18 made aware that they were arrested or stopped.

19 Q As far as your understanding goes, does  
20 issuance of an I-card authorize the person to be taken  
21 into custody if there is no outstanding warrant or are  
22 they just subject to being questioned if they choose  
23 to or something else?

24 MR. THADANI: Objection.

25 A There is different I-cards. There is



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2 suspect only I-cards, if you believe they might be  
3 involved in something. And then there is probable  
4 cause to arrest I-cards.

5 Q Okay.

6 A With the probable cause to arrest  
7 I-cards, they would be brought in.

8 Q On the first type of I-card, the person  
9 refused to cooperate, did they have the option to just  
10 walk away?

11 A A suspect only?

12 Q Yes. Or would the officer who found  
13 them be authorized to take them into custody?

14 MR. THADANI: Objection.

15 A The officer who found them would call up  
16 and see if they wanted that person brought in.

17 Q Again, assuming the person said I don't  
18 want to come in, was it your understanding the I-card  
19 created an authority to take them into custody or not?

20 A I don't know.

21 Q Back in 2006-2007, did the computer  
22 checks that were done for the victims differ for the  
23 computer checks that would be done for people who were  
24 suspects in a case?

25 A I think the same checks would be done.

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2 Q Again, some general questions and maybe  
3 we will find the time to see about the file.

4 If a witness was shown photographs for the  
5 purposes of attempting to identify a perpetrator of a  
6 homicide, would records be routinely kept of that  
7 identification procedure?

8 MR. THADANI: Objection.

9 A Yes.

10 Q Those records that are shown are what  
11 are known as photo arrays?

12 A It could be a photo array or it could be  
13 just a single photo.

14 Q Are you aware of any policy, general  
15 prohibition about showing a single photo to somebody  
16 attempting to identify a suspect?

17 A If somebody -- it depends on how well --  
18 I will use the word complainant or victim or witness  
19 knows the suspect or perpetrator. It all depends on  
20 how well they know each other.

21 Q Let's take it in steps. Assuming that  
22 the person who was attempting to make the  
23 identification when you are attempting to find out who  
24 it is does not necessarily know the person's identity,  
25 would you be required to show what is known as a

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2 standard photo array of six photos?

3 MR. THADANI: Objection.

4 A Yes.

5 Q And in other situations where the person  
6 is, I think the language is, known to the identifiers,  
7 sometimes less than six are used?

8 MR. THADANI: Objection.

9 A You are talking about photographs and  
10 photo arrays?

11 Q Photographs or mug shots.

12 A Normally it's six photos, but I think it  
13 might be line ups that you can use only five. But  
14 normally photo arrays usually have six people in them.

15 Q If somebody was making what is known as  
16 a confirmatory identification where they knew the  
17 person or indicated that they knew the perpetrator by  
18 name, would it be required to use a photo array or did  
19 you consider it okay to use a single photo?

20 MR. THADANI: Objection.

21 A I would consider a single photo okay,  
22 but depending on what district attorney you are  
23 working with, sometimes they want you to show a photo  
24 array.

25 Q Okay. Not necessarily in this case, but

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2 generally in cases that you work on, if a person who  
3 was making an identification claims to know the person  
4 by name, was it standard practice to, if possible,  
5 show the person at least one photograph to confirm  
6 that you are talking about the same person assuming  
7 they were not in custody, of course?

8 MR. THADANI: Objection.

9 A Yes. It all depended on how well they  
10 knew him.

11 Q So if somebody said I know John Smith  
12 did something, you would, if at all possible, based on  
13 the person naming them, show them a photograph, at  
14 least one, for confirmation of the person they are  
15 naming being the person, in fact, who you were looking  
16 for?

17 MR. THADANI: Objection.

18 A As long as they knew him fairly well,  
19 yes.

20 Q When photographs are used, whether they  
21 are photo arrays or single photographs, are those  
22 photographs once used supposed to be kept in the case  
23 folder?

24 MR. THADANI: Objection.

25 A Yes.

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2 Q They should designate to whom they were  
3 shown?

4 A Yes.

5 Q If a photo array was shown to a  
6 potential witness and the identification was not made,  
7 would you still put the photo or photo arrays into the  
8 case folder indicating it was negative for an  
9 identification?

10 A Yes.

11 Q To generalize about it, every time a  
12 photo identification was attempted, the photograph,  
13 who it was shown to and the outcome should be in the  
14 case folder, correct?

15 A It should be.

16 Q With regard to line ups, same  
17 procedures? You have to take photographs of the line  
18 up and the identification procedures, there are set  
19 rules as to how that stuff is supposed to be kept?

20 A Yes.

21 Q The reason for that, you know, is  
22 because otherwise, the identifications may be  
23 challenged later by the defense if there is a  
24 prosecution, correct?

25 A Yes.

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2 Q So the documentation is to try to  
3 attempt to show the fairness of the identification  
4 procedure that was used?

5 A Yes.

6 Q And includes things like making sure the  
7 choices are similar in the way they appear?

8 A Yes.

9 Q As much as possible?

10 A As much as possible.

11 Q There is a third category of  
12 identifications that sometimes happen in  
13 investigations called show ups, correct?

14 A Correct.

15 Q Show ups are at-the-scene  
16 identifications made by either victims or witnesses?

17 A At the scene or close by.

18 Q Okay. To your knowledge, were there any  
19 show ups conducted in connection with this case at  
20 all?

21 A Not that I am aware of.

22 MR. GROSS: Off the record.

23 (Whereupon, a discussion was held off  
24 the record.)

25 Q Did you, as a matter of policy, back in

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2 the 42 in 2006-2007 have a procedure about when and  
3 how a case is to be closed?

4 MR. THADANI: Objection.

5 A I don't understand what you are saying.

6 Q When a case is started, the case is  
7 open, correct?

8 A Yes.

9 Q At some point most cases eventually get  
10 closed, correct?

11 A Correct.

12 Q Who makes a determination about when a  
13 case is to be closed?

14 MR. THADANI: Objection.

15 A The ultimate determination is up to the  
16 supervisor. A detective will submit a closing DD5  
17 when he believes it's closing, but the supervisor will  
18 determine if it should be closed at that time or not.

19 Q To your knowledge, was a closing DD5  
20 ever created by you or another detective in connection  
21 with this case?

22 A It should have been.

23 Q During this investigation, was it your  
24 determination that the gunfire that took place on the  
25 street that night emanated from one person or more

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2 than one person?

3 A More than one person.

4 Q The other person that was involved in  
5 the shooting, whatever investigation was done with  
6 regard to that person should have wound up in that  
7 same case folder, correct?

8 MR. THADANI: Objection.

9 Q Since it's kept by victim?

10 A It's kept by who?

11 Q The case folder was kept by victim as  
12 opposed to suspect so whatever investigation was done  
13 with regard to the other shooter in this case, that  
14 information regarding that investigation should have  
15 wound up in this case folder, correct?

16 MR. THADANI: Objection.

17 A Correct.

18 Q Do you remember any documentation that  
19 was ever created in connection with this case as to  
20 the other perpetrator that was involved in the  
21 shooting?

22 MR. THADANI: Objection.

23 A We didn't have -- when you say other  
24 perpetrator, who do you mean?

25 Q Well, you told me a moment ago that



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2 based on the ballistics evidence and other information  
3 you got there was more than one person involved in  
4 this shooting, correct?

5 A Yes.

6 Q And basically your understanding was  
7 they were shooting at each other as opposed to a  
8 third-party?

9 A I don't think -- no, I don't think they  
10 were shooting at each other. I think they were  
11 shooting at a particular person.

12 Q So you think there were two different  
13 shooters that were shooting at one intended victim or  
14 more than one intended victim?

15 MR. THADANI: Objection.

16 A That's what I believe.

17 Q On what do you base that?

18 A There were certain shell casings found  
19 outside the bodega on the sidewalk and by a van and  
20 then there was a smaller caliber.

21 Q Up the block?

22 A Shell casings up the block by Union  
23 Avenue so I know there is two different guns and two  
24 different people, you know, shooting at that time.

25 Q My question is, what made you believe

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2 that they weren't shooting at each other, but rather  
3 at a third-party?

4 MR. THADANI: Objection.

5 Q If that's what you testified to earlier.  
6 I thought that's what I heard.

7 A Yeah. I believe either -- I think I  
8 interviewed or somebody interviewed another person who  
9 gave a story about what happened. I don't know who  
10 took those notes on that, somebody else did.

11 Q But whatever those notes were and who  
12 took them, it reflected what piece of information  
13 reflected that they weren't shooting at each other but  
14 rather at some third-party?

15 A You asked me does it reflect.

16 Q I know you don't remember specifically,  
17 but you said you got the impression. Can you tell me  
18 what information gave that to you?

19 A An interview from a particular person  
20 said that a group, you know, somebody went on the  
21 other side of the street and they were shooting at  
22 somebody who was standing on a stoop.

23 Q You think both of them --

24 A That made me believe that they were  
25 shooting both at that particular person.

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2 Q Was there any evidence that you  
3 collected to lead you to believe that one of the  
4 shooters were shooting at the other shooter?

5 A No.

6 Q The weapons in this case were never  
7 recovered, correct?

8 A Correct.

9 Q To your knowledge, was the other  
10 perpetrator ever arrested in connection with this  
11 case?

12 MR. THADANI: Objection.

13 A No, he was not. He or she was not.

14 Q Do you have any recollection as you sit  
15 here right now about who the witness would have been  
16 that led you to believe, either by name or by  
17 category, that the shooting wasn't directed at a  
18 third-party?

19 A I believe his name was Kwan.

20 Q Kwan was interviewed in connection with  
21 this investigation?

22 A I think he was.

23 Q If Kwan was interviewed in connection  
24 with this investigation, there should be documents  
25 that reflect that, correct?

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2 MR. THADANI: Objection.

3 A I'm not sure if there is documents.

4 Q Do you know what Kwan's real name is?

5 MR. THADANI: Objection.

6 A I am not sure his last name.

7 Q To your knowledge, Kwan is not a  
8 confidential informant, is he?

9 A Not that I know of.

10 Q If he was interviewed as a witness in  
11 connection with this case, there should have been a  
12 document created, a DD5 or some other police record to  
13 reflect that interview, correct?

14 MR. THADANI: Objection.

15 A Not always.

16 Q Would there be any reason not to put  
17 that interview in an official document as opposed to a  
18 notebook?

19 MR. THADANI: Objection.

20 A If the person didn't want to be  
21 involved.

22 Q Well, when you interview witnesses and  
23 they don't want to be involved, that's not a choice  
24 that you generally offer them, is it?

25 MR. THADANI: Objection.

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2 A I don't ask them if they want to be  
3 involved, but if they are sitting there, I don't know  
4 anything, I don't want to be involved, you know,  
5 that's --

6 Q Assuming that you indicated in this case  
7 that you think that Kwan gave relevant information to  
8 the investigation, and he is not a confidential  
9 informant, is there any reason why a DD5 should not  
10 have been created documenting that interview or  
11 memorializing that interview?

12 A I don't know.

13 Q Can you think of a reason as you sit  
14 here right now if it turns out that there was no DD5  
15 created with regard to Kwan as to why that occurred?

16 MR. THADANI: Objection.

17 A No, I don't.

18 Q Is it your understanding that Kwan was  
19 an eyewitness to this shooting as you sit here now?

20 A I don't recall if he actually saw the  
21 shooting or that he just heard. I don't know that  
22 answer.

23 Q Okay. I take it that based on the  
24 answers you have given up to now, you have an  
25 independent recollection of the events that took place

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2 in connection with this investigation, fair statement?

3 MR. THADANI: Objection.

4 A Say that again.

5 Q You have an independent recollection,  
6 other than the records, as to what occurred with  
7 regard to this investigation?

8 A Certain recollections.

9 Q Now, before you came here to testify  
10 today, did you review any records in connection with  
11 the testimony you were going to give?

12 A Yes, I did.

13 Q And when was the most recent time that  
14 you reviewed any records in connection with the  
15 testimony you are giving here today?

16 A Within the last two weeks.

17 Q Okay. Where did that review take place?

18 A At the corporation counsel.

19 Q What records did you review?

20 MR. THADANI: Objection. Don't answer.  
21 I am invoking privilege on that.

22 MR. GROSS: I am not asking about  
23 conversations, I am asking the records he  
24 reviewed.

25 MR. THADANI: To the extent you are

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2 asking about documents that someone at  
3 corporation counsel decided to show him or  
4 not show him, I am objecting to privilege and  
5 instructing him not to answer.

6 MR. GROSS: I want a ruling on that.  
7 Let's go off the record a minute.

8 (Whereupon, a discussion was held off  
9 the record.)

10 Phone call with Judge Freeman for a  
11 ruling:

12 COURT CLERK: Good morning.

13 MR. JAFFE: Good morning. This is  
14 Michael Jaffe at Pazer, Epstein and Jaffe.  
15 I've got defense counsel with me in a  
16 deposition on a file called Creighton against  
17 the City of New York. We are in a deposition  
18 of one of the named defendants and we have an  
19 issue that requires a ruling from the judge.  
20 Is that something we can possibly do by phone  
21 now by calling in?

22 COURT CLERK: It might be. The judge  
23 is on the other line right now on a call, I  
24 am not sure how long she expects that one to  
25 go. I can run this by her as soon as she is

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2 off that call and get an answer back to you.  
3 Can you give me a little bit of an idea about  
4 what the issue is?

5 MR. JAFFE: Very briefly. It's a civil  
6 rights, wrongful arrest, malicious  
7 prosecution case. We are questioning the  
8 arresting detective who is a named defendant  
9 and he has testified that prior to being  
10 deposed, he reviewed certain documents at  
11 corporation counsel's office relative to his  
12 preparation for deposition.

13 We've asked for the production of those  
14 documents since he reviewed them in  
15 preparation and that's met with an objection  
16 which requires a ruling from the Court.

17 MR. GROSS: We asked him what documents  
18 verbally he reviewed.

19 MR. THADANI: This is Kevin Thadani on  
20 behalf of defendants. It's not my  
21 understanding that counsel asked for  
22 production of those documents. He asked what  
23 those documents were. It's our position that  
24 to the extent the questioning is with respect  
25 to what documents his attorneys decided to



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2 show him in preparing him for this  
3 deposition, that is immaterial and an answer  
4 that would be covered by the attorney/client  
5 privilege.

6 It is our position that counsel can ask  
7 whether he reviewed documents, which they  
8 have, and the witness has said that he has.  
9 They can ask whether any of those documents  
10 refresh his recollection and they can ask him  
11 to identify those documents.

12 With respect to whether the question  
13 pertains to what counsel decided to show him  
14 and not to show him, it's our position that  
15 that's covered by attorney/client privilege  
16 and I have instructed the witness not to  
17 answer pending a ruling by the judge on this.

18 MR. GROSS: Just to be clear --

19 COURT CLERK: As you are telling me  
20 this, I see the judge is off the other line.  
21 I am going to put you on hold to see if she  
22 is available to do this now or she'll give  
23 you a call back.

24 MR. JAFFE: Thank you.

25 MR. GROSS: Thank you.

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2 MR. THADANI: Thank you.

3 THE COURT: Hi, it's Judge Freeman.

4 MR. GROSS: Your Honor, this is Richard  
5 Gross.

6 MR. JAFFE: Mike Jaffe.

7 MR. THADANI: And Kavin Thadani on the  
8 line for defendant. Good afternoon, your  
9 Honor.

10 THE COURT: Hi. Are we on the record?

11 MR. JAFFE: We are.

12 THE COURT: I have a telephone  
13 conference call coming in at 12 o'clock and  
14 by my clock, it's any second so I don't  
15 really have a window of time to talk to you  
16 and make a ruling.

17 Based on what my clerk said, there is a  
18 refusal to produce documents or testify about  
19 documents?

20 MR. GROSS: No, actually, that's not  
21 correct.

22 THE COURT: Tell me really quick.

23 MR. GROSS: I only asked the witness --

24 THE COURT: Who is this speaking?

25 MR. GROSS: This is Richard Gross, your

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2 Honor.

3 I only asked the witness where he  
4 reviewed the documents and what documents he  
5 reviewed. No other questions were posed to  
6 him. I never brought up how he got the  
7 documents or who gave them to him. I think  
8 those are straightforward questions that have  
9 to be answered.

10 MR. THADANI: Your Honor, this is Kevin  
11 Thadani on behalf of defendants. Mr. Gross  
12 is correct that he did ask the witness where  
13 he reviewed the documents. He answered that  
14 he reviewed the documents at corporation  
15 counsel's office. And then he asked what  
16 documents he reviewed.

17 I objected to that on the grounds of  
18 attorney/client privilege and instructed  
19 the witness to not answer on the basis that  
20 it's our position, respectfully, to the  
21 extent that the questioning is going into  
22 what documents counsel decided to show him  
23 and not to show him in preparing him for this  
24 deposition is covered by the attorney  
25 client/privilege. I also --

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2 THE COURT: Hold on a second. Work  
3 product? Are you talking about work product?

4 MR. THADANI: Not work product.  
5 Attorney/client privilege with respect to  
6 what documents --

7 THE COURT: Wait, wait, wait. I am  
8 going to say something really quickly and  
9 then I'm probably going to have to get off  
10 the phone, okay? If the matter is not  
11 resolved by the time I have to get off, make  
12 whatever record you have to make and revisit  
13 it afterwards. You already have another  
14 issue that has to be re-visited anyway.

15 As you know, for something to be  
16 attorney/client privilege, there has to be a  
17 communication where something has to ask for  
18 legal advice or give legal advice and it has  
19 to be understood that asking for legal advice  
20 or giving legal advice is the core of  
21 attorney/client privilege. That is the  
22 communication between the attorney and the  
23 client.

24 Work product can include, and I am  
25 assuming you know, something that reveals the

1 GLENN GODINO

2 inner workings of the mind of the attorney  
3 making strategic determinations on the  
4 litigation and that's what's usually invoked  
5 when you are talking about these documents.

6 I selected to show somebody something  
7 out of the larger selection and the very fact  
8 that I chose to show someone something that  
9 will reveal my thinking, that's usually work  
10 product.

11 MR. THADANI: Right.

12 THE COURT: So I am not really seeing an  
13 attorney/client issue here. If the documents  
14 themselves that you showed are  
15 attorney/client privilege, then even on a  
16 privilege line you would have to identify  
17 what a document is. You would have to give  
18 enough information on it so the other side  
19 can challenge the contents of whether it's  
20 really privileged or not, a general  
21 description of the document and so on and so  
22 that you can have a privilege log. Does that  
23 makes sense?

24 So merely identifying a document or not  
25 identifying a document does not itself reveal

1 GLENN GODINO

2 whether the document is privileged or does  
3 not reveal privileged information. It's the  
4 substance of the communication that would or  
5 would not be privileged.

6 Now, if what you are making is a work  
7 product objection, you know, generally, a  
8 party is entitled to inquire about what  
9 documents are reviewed by a witness in  
10 preparation for the deposition. That's  
11 fairly standard. That's generally answered.

12 So, if it's as simple as that, what  
13 documents did he review in preparation for  
14 your deposition, in preparation for giving  
15 this testimony, usually that's answered.

16 If you really think something is so  
17 sensitive about what documents were shown to  
18 him that could give rise to some kind of work  
19 product claim, then, you know, you are  
20 entitled to instruct the witness not to  
21 reveal attorney/client privilege or work  
22 product, if you really feel that's necessary.

23 Bear in mind, anybody who does not allow  
24 questioning to go forward on the basis of a  
25 claim and if those claims are defeated, if I

1 GLENN GODINO

2 thought there was no good faith basis for it,  
3 I am going to require you to re-open the  
4 deposition to be on that side's time, okay?

5 MR. THADANI: Understood.

6 THE COURT: I hear the phone ringing,  
7 that's my phone call conference.

8 MR. THADANI: Thank you.

9 MR. GROSS: Hopefully we resolved it.  
10 Thanks.

11 MR. THADANI: In light of the judge's  
12 statements, you can go ahead with the  
13 questioning.

14 MR. GROSS: Okay.

15 Q What documents did you review in  
16 connection with your preparation at corporation  
17 counsel's office?

18 A I reviewed a document, a Detective  
19 Laducca (phonetic) that was on the wanted card team,  
20 I-card team at that time. There was one or two other  
21 documents, I can't recall right now which ones it was,  
22 but I particularly remember that one document.

23 Q Okay. You indicated you did that review  
24 about when?

25 A I think in the last two weeks.

1 GLENN GODINO

2 Q When that review took place, was the  
3 entire case file available to you? Was it physically  
4 in the room?

5 A I don't know.

6 Q In preparation for this case, the  
7 testimony that you were going to give, whether it was  
8 on that occasion or any other occasion, did you have  
9 access to the entire case file?

10 MR. THADANI: Objection.

11 A This case went from corporation counsel  
12 person to corporation counsel. Previously, yes, I  
13 looked at the folder within the last couple of years.  
14 But just recently, I haven't looked at the whole  
15 folder.

16 Q When is the last time that you  
17 physically saw the case folder itself?

18 A I believe I gave the case folder when I  
19 picked it up to Silverstein. Another corporation  
20 counsel person. I don't remember his whole name.

21 MS. GROSS: Feel free to fill it in.

22 MR. THADANI: For the record, I believe  
23 Steve Silverman.

24 A That's the last recollection I have of  
25 seeing the folder.



1 GLENN GODINO

2 Q About how long ago was that?

3 A I'm approximating. It's over a year, a  
4 year and a half. Approximately. I don't remember.

5 Q Okay. From that time when you saw the  
6 entire case folder up until sometime in the recent  
7 past that you just testified about, have you reviewed  
8 any other documents in connection with this case  
9 whether it was for giving testimony here or otherwise?

10 A Just the I-card document I told you  
11 about and one or two other ones. I just can't  
12 remember what they are.

13 Q Was there some other occasion between  
14 the two you mentioned where you reviewed records in  
15 connection with this case?

16 A I don't think so.

17 Q Specifically, have you ever reviewed the  
18 grand jury testimony that was given in connection with  
19 this case? And by that I mean, have you read the  
20 transcript?

21 MR. THADANI: Objection.

22 Q At any time?

23 A Not that I can recall.

24 Q As you sit here right now, are you aware  
25 of the fact that Mr. Spruell and Mr. Terab have been

1 GLENN GODINO

2 deposed in connection with the civil case?

3 A Yes.

4 Q Did you learn by any means any of the  
5 information that was contained within either of those  
6 depositions either by being told about it, reading it  
7 or any other way?

8 MR. THADANI: Objection. Answer with  
9 respect to communications not had between  
10 either myself or prior counsel and you.

11 MR. GROSS: Let me be clear on this for  
12 the record in case we get a ruling.

13 My position is that regardless of how he  
14 came about that information, since I am  
15 questioning the witness about what he knows  
16 about this case and the events, it doesn't  
17 matter whether it was provided by counsel as  
18 part of preparation or otherwise. I am only  
19 asking him, and I don't care where the  
20 information was gotten from, what he knows.  
21 Not where he acquired it from. And I think I  
22 am perfectly entitled to get that information  
23 without having the attorney/client privilege  
24 used as a shield to prevent me from that  
25 inquiry.

1 GLENN GODINO

2 Again, if you instruct him not to  
3 answer, I can't stop you, but I am telling  
4 you that I think that borders on being  
5 frivolous.

6 MR. THADANI: I understand. Can you  
7 re-ask the question.

8 (Whereupon, the requested question was  
9 read back by the reporter.)

10 A Yes.

11 Q Let's start with have you ever seen  
12 copies of the depositions that were taken in the  
13 Spruell and Terab case -- that were taken in this case  
14 of those two witnesses?

15 A I have not.

16 Q Did you learn about particular pieces of  
17 information that were contained in those cases that  
18 are relevant to this lawsuit in your opinion?

19 MR. THADANI: Objection.

20 A In regards to the depositions?

21 Q Yes.

22 A No.

23 Q Did you ever learn for instance, what  
24 Mr. Terab testified to with regard to his  
25 identification of the person who passed the gun to

1 GLENN GODINO

2 Dior Creighton?

3 MR. THADANI: Objection.

4 A Are you saying specifically at  
5 corporation counsel? Because I have learned from  
6 other means.

7 Q No, I don't want to know where you got  
8 it from, because I may not be entitled to know that.  
9 All I am asking you is, did you learn from any source  
10 information contained in that deposition about Mr.  
11 Terab's testimony as to who he said passed the gun to  
12 Dior Creighton?

13 MR. THADANI: He is asking about  
14 deposition testimony.

15 A Deposition, no, I did not.

16 Q Did you learn that Mr. Spruell, the  
17 person who claimed to have been the party that -- one  
18 of the people to have claimed to pass the gun to Dior  
19 testified under oath in connection with this case?

20 MR. THADANI: Objection.

21 A Yes, I learned.

22 Q Did you learn from any source that Mr.  
23 Spruell admitted in that deposition that he was the  
24 one who, in fact, passed the gun to Dior Creighton?

25 MR. THADANI: Objection.

1 GLENN GODINO

2 A I wasn't given any information that came  
3 out of the deposition.

4 Q Okay. Did you learn from whatever the  
5 source might have been that Mr. Spruell formally  
6 admitted that he was the one that passed the gun to  
7 Dior Creighton?

8 MR. THADANI: Objection.

9 A Yes, I did.

10 Q How did you learn that?

11 A When I watched Kenny's television  
12 interview and it had Kijafa Spruell on there saying  
13 that he was the one that passed the gun.

14 Q Okay. You became aware of the civil  
15 suit being started when papers were served on you at  
16 some point, correct?

17 MR. THADANI: Objection.

18 A Correct.

19 Q After those papers were served on you,  
20 you made a formal request to corporation counsel to  
21 represent you in this case?

22 A Yes, I did.

23 Q And they agreed to represent you?

24 A Yes, they did.

25 Q After you received the papers in this

1 GLENN GODINO

2 case, did you ever discuss anything with regard to  
3 this lawsuit with any present or former district  
4 attorney?

5 A The content of -- I ran into ADA Terri  
6 Gottlieb last week when I was preparing for a homicide  
7 trial and she needed to pick up a folder that we are  
8 going to be working with so she just told me that she  
9 is going to be deposed coming up at the end of this  
10 month, but we didn't get into details of what may be  
11 in the deposition or not, because neither of us had  
12 been deposed at that point.

13 Q But I am not talking about what might be  
14 in the deposition. All I am asking you is, other than  
15 ADA Gottlieb, did you ever discuss the substance of  
16 this case, the investigation, anything you did since  
17 the lawsuit has been started with any ADA? I am not  
18 referring to the deposition itself, just whether you  
19 ever discussed it with them.

20 A I ran into Bruce Birns. I was on  
21 another trial and he came out of a court room and he  
22 had just acknowledged that there was the lawsuit. But  
23 I don't believe we discussed in detail what the, you  
24 know, case at that time.

25 Q To your knowledge --

1 GLENN GODINO

2 A He wasn't an ADA anymore at that time.

3 Q That was my next question.

4 A Yeah.

5 Q Any other ADAs?

6 A Not that I am aware of.

7 Q Have you discussed this case with any of  
8 the police officers or detectives who were involved in  
9 the investigation or the prosecution of this case  
10 since the civil case has been started, since you  
11 received the papers?

12 A I spoke with Detective Roberts just in  
13 general that this case is going on, but we didn't  
14 discuss particulars of the case.

15 Q Is Detective Roberts still at the 42?

16 A He is retired.

17 Q Do you remember approximately how long  
18 ago he retired?

19 A Actually, it was just three years a  
20 couple of weeks ago.

21 Q Other than ADAs and police officers,  
22 former or otherwise, have you discussed this case  
23 other than with your counsel with anybody else?

24 A No, I did not.

25 Q You indicated earlier in your testimony

1 GLENN GODINO

2 that you believe there was some documents that were in  
3 the case file at one point that are no longer there.  
4 When did you come to learn that?

5 MR. THADANI: Objection.

6 A When Dan McCarthy was assigned the case.  
7 He called me into his office so we could start going  
8 over the case and when I looked into the folder, a lot  
9 of the DD5s were missing.

10 Q Were you the person who delivered, if  
11 that's how it happened, the case folder to the  
12 district attorney?

13 A Yes.

14 Q Were those documents, to your knowledge,  
15 that are now missing in the case folder at the time  
16 you delivered it?

17 A I believe they were.

18 Q As best as you can recollect from  
19 looking through the file at that time, are we talking  
20 about one or two documents, a large number of DD5s,  
21 something else? Can you give us a little more  
22 specificity about how much was missing?

23 A I don't know the amount. I wouldn't say  
24 more than thirty, but a few documents. I don't even  
25 know exactly how many.



1 GLENN GODINO

2 Q So I asked you before, let me go back to  
3 it for a moment.

4 The DD5s that were created in connection  
5 with this investigation, would there have been a list  
6 maintained of the DD5s that were created in this case  
7 that would have either gone in the case file or have  
8 been attached to it?

9 MR. THADANI: Objection.

10 A I am not sure if I kept an index.

11 Q As you sit here right now, is there  
12 anyway that the DD5s that have gone missing, that we  
13 could find a list of those, that you know of?

14 MR. THADANI: Objection.

15 A I tried to locate them because back  
16 then, we used to -- I think there was three copies of  
17 each DD5. One would stay with the case folder, one  
18 would get sent over to Bronx Robbery, and one would  
19 get sent over downtown to some unit, I couldn't tell  
20 you which unit. I tried tracking down those documents  
21 and I wasn't able to find any of them.

22 Q The original DD5 goes in the case folder  
23 and the copies were the ones that would be distributed  
24 wherever they went?

25 A Yes.

1 GLENN GODINO

2 Q Based on your understanding of how the  
3 police department works, should those other DD5s, I  
4 know you said you couldn't find them, but based on  
5 your understanding of how the police department is  
6 organized and works, should those DD5s still be in  
7 existence somewhere?

8 MR. THADANI: Objection.

9 A I don't know how long the department  
10 keeps those particular files for.

11 Q Okay. I know things have changed. In  
12 2006 and forward when documents were created, whether  
13 or not the documents themselves went on a computer,  
14 would there have been a record made of the DD5s that  
15 were created that should be on some computer database?

16 MR. THADANI: Objection.

17 A I am not aware of that.

18 Q When DD5s were created in connection  
19 with this case, were they created from a paper copy or  
20 were they done on a computer and then printed or  
21 something else?

22 A No, they were preprinted documents that  
23 we put into a typewriter and we used to type the DD5s.

24 Q Physically type?

25 A Physically type them.

1 GLENN GODINO

2 Q That was done in 2006 and 2007?

3 A Yes.

4 Q It's not done that way anymore, I  
5 gather?

6 A No, thank God.

7 Q Can you specifically tell me which DD5s  
8 you noticed were missing at the time you became aware  
9 of them when you were speaking to the ADA?

10 A No, I can't.

11 Q Can you mention any that were missing?

12 A I don't -- I didn't see that file for --  
13 I am going to say a good three, over three years so I  
14 don't recall exactly how far the DD5s went up to.

15 Q Okay. DD5s when they are created are  
16 dated both as to the date they were created and the  
17 starting event they are being created about, correct?

18 A Correct.

19 Q The DD5s that were created in connection  
20 with the Caldwell case, were they numbered? Usually  
21 it's in the upper right-hand corner somewhere on the  
22 DD5 so when you look at an index sheet, if one  
23 existed, they would have a number that corresponded to  
24 that on the DD5 itself?

25 MR. THADANI: Objection.

1 GLENN GODINO

2 A I don't remember if these were numbered.  
3 They should have been numbered, but I don't recall if  
4 they were numbered.

5 Q So if you had the last numbered DD5 and  
6 you could tell by date approximately when that DD5 was  
7 created, that would give you a way to check back to  
8 see which ones you had and which ones you didn't,  
9 correct?

10 MR. THADANI: Objection.

11 A If I knew specifically when the last one  
12 was, yes.

13 Q So if they are not numbered, then there  
14 is no way to tell, correct? That's one of the reasons  
15 why the DD5s are numbered so that you can tell the  
16 consecutive order of where they are, is that a fair  
17 statement?

18 A Yes, it is.

19 Q How did you come to be aware of the fact  
20 when you looked at the file, if you recollect, as to  
21 the fact that there were DD5s that were missing? What  
22 made you think -- were you looking for a particular  
23 DD5 or something else?

24 A I think there was an ID photo that went  
25 missing because I was looking for an ID photo. And I

1 GLENN GODINO

2 think I recall that the DD5s just stopped because the  
3 last one in most cases, it wasn't in this case, should  
4 be a blue DD5, but if we close the case when you have  
5 one arrest, it would have been a blue DD5 at that  
6 time.

7 Q That's known as an administrative  
8 closing as opposed to a final closing?

9 MR. THADANI: Objection.

10 A I don't know. I don't know that term.

11 Q Okay.

12 A But if you make an arrest after that  
13 blue DD5, it would be a pink DD5, which was -- it  
14 wasn't a follow up, it was another DD5. I can't  
15 remember the name.

16 Q Okay. Are those DD5s, other than being  
17 different colors, did they contain different  
18 information on them or did they all have the same  
19 information?

20 MR. THADANI: Objection.

21 A It would have different things inside.

22 Q So a DD5 is a catchall for any follow up  
23 information, but there are different types used for  
24 different purposes?

25 A Yeah. There is DD5 that you would use

1 GLENN GODINO

2 when you were starting to put information in. Then  
3 they have a second sheet if that DD5 becomes too long.  
4 Then there is a blue DD5 at that time that if you were  
5 closing the case as far as an arrest or if it was  
6 previously reported in a different command. I think  
7 that might be answer to that question.

8 Q Okay. Do you know if there was any --  
9 if I asked you this before, I apologize. If there  
10 were any documents created in connection with looking  
11 for the other perpetrator who was associated with the  
12 difference in the ballistics evidence that showed  
13 different shell casings?

14 MR. THADANI: Objection.

15 Q Of any kind.

16 A I don't believe I ever knew who the  
17 other shooter was so I don't know if there could be a  
18 document looking for that person, because I don't  
19 believe I learned who the other person was that was  
20 shooting.

21 Q You received the surveillance video from  
22 a detective you mentioned earlier who picked it up  
23 from the bodega where Mr. Terab was the proprietor,  
24 correct?

25 A Correct.

1 GLENN GODINO

2 Q Would it refresh your recollection if I  
3 told you that Mr. Terab was interviewed and there was  
4 documentation created in connection with that  
5 interview on December 31st, 2006, does that sound  
6 correct to you? I will show you the document.

7 A He was interviewed.

8 Q At the time that that interview took  
9 place, that was after you had received the  
10 surveillance video, correct?

11 A I believe it was.

12 Q So the shooting is on the 26th, the  
13 interview is on the 31st and you testified earlier  
14 that the video was picked up within a day or two at  
15 the latest from the time of the shooting, correct?

16 MR. THADANI: Objection.

17 A Correct.

18 Q As part of your initial investigation of  
19 this case, did you look at that video?

20 A Yes, I did.

21 Q You looked at that video before you  
22 interviewed Mr. Terab?

23 A Yes, I did.

24 Q How many times in all from the time you  
25 came into possession of that surveillance video until

1 GLENN GODINO

2 the present day have you looked at it?

3 A Maybe four or five times.

4 Q Do you know as you sit here right now  
5 whether the investigation into the Caldwell shooting  
6 is open or closed?

7 MR. THADANI: Objection.

8 A It's closed.

9 Q Other than the fact that this file is in  
10 civil litigation, what happens to a closed file after  
11 it's closed; does it stay in the same place in the  
12 precinct where it was or does it move or something  
13 else?

14 MR. THADANI: Objection.

15 A It should go into -- each detective  
16 squad has a particular closet that you put all  
17 homicide folders in. It should stay there so it  
18 doesn't disappear.

19 Q When you say all homicide folders, you  
20 are talking about the ones that are no longer under  
21 active investigation?

22 A They could be still open and not solved.  
23 They could be put in there or they could be closed to  
24 an arrest and put in there.

25 Q Okay. In the 42nd Precinct back in 2006



1 GLENN GODINO

2 and the couple of years following it, was there a  
3 designation of files where there was some portion of  
4 it that was not solved known as cold case files?

5 MR. THADANI: Objection.

6 A In regarding this case or in general?

7 Q No. In general. Just in general.

8 A Yes.

9 Q How does a case, based on your knowledge  
10 back then, how would a case wind up in the cold case  
11 files?

12 A Just when you don't have any witnesses,  
13 any leads and it's just practically going nowhere, it  
14 gets put into the closet.

15 Q But they kept these cold case files  
16 because there are procedures in place that sometimes  
17 they get re-investigated or people get assigned to  
18 them, things like that?

19 MR. THADANI: Objection.

20 Q If you know.

21 A They are all put in one same closet, you  
22 know. It's not separate from a cold case. All the  
23 homicide folders get put into the closet and if  
24 somebody down the line gets a witness that they didn't  
25 know at the time, they can always go to that closet,

1 GLENN GODINO

2 hopefully find the folder and investigate it.

3 Q Okay. If a case has more than one  
4 perpetrator and one of the perpetrators is arrested  
5 and one of the other perpetrators is not arrested, is  
6 that a case that routine gets closed or does it stay  
7 open?

8 MR. THADANI: Objection.

9 A It all depends on the amount of time  
10 that goes by. If you arrest somebody, you would close  
11 it with a blue DD5 at that time just to get the  
12 closing for that case, but it's still active pending  
13 if you get the second or third person, whoever you are  
14 looking for.

15 MR. GROSS: We are going to stop based  
16 on our earlier conversation and you are going  
17 to get us that wonderful original case file.

18 MR. THADANI: Sure.

19 MR. GROSS: I assume that anything that  
20 you deemed privileged based on the discovery  
21 we have had on this case should be in that  
22 case file, correct? It should contain all  
23 the documents?

24 MR. THADANI: I mean, I assume we are  
25 talking about the detective file, the file

1 GLENN GODINO

2 that's been referred to here. We didn't  
3 withhold anything on the basis of privilege  
4 so I will bring you the whole file.

5 MR. GROSS: That's what I was getting  
6 at. Thank you.

7 (Whereupon, this portion of the  
8 examination was concluded. Time  
9 noted: 12:34 p.m.)

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A C K N O W L E D G M E N T

STATE OF NEW YORK )

SS:

COUNTY OF )

I, GLENN GODINO, hereby certify that I  
have read the transcript of my testimony taken under  
oath in my deposition of April 11th, 2016; that the  
transcript is a true, complete and correct record of  
what was asked, answered and said during this  
deposition, and that the answers on the record as  
given by me are true and correct.

\_\_\_\_\_  
GLENN GODINO

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

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## I N D E X

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WITNESS

EXAMINATION BY

PAGE

5

Glenn Godino

Mr. Gross

4-106

6

7

## INFORMATION/DOCUMENTS REQUESTED

8

DESCRIPTION

PAGE

9

- Outside of two case folders

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C E R T I F I C A T I O N

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4

I, JOANNA BOJARYN, a Notary Public of the  
State of New York, do hereby certify:

5

6

That the testimony in the within proceeding  
was held before me at the aforesaid time and place;

7

8

9

10

11

That said witness was duly sworn before the  
commencement of the testimony, and that the testimony  
was taken stenographically by me, then transcribed  
under my supervision, and that the within transcript  
is a true record of the testimony of said witness.

12

13

14

15

16

I further certify that I am not related to  
any of the parties to this action by blood or  
marriage, that I am not interested directly or  
indirectly in the matter in controversy, nor am I in  
the employ of any of the counsel.

17

18

IN WITNESS WHEREOF, I have hereunto set my  
hand this 18th day of April, 2016.

19

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25

*Joanna Bojaryn*

JOANNA BOJARYN



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

KENNETH CREIGHTON,

Plaintiff,  
12 CV 07454

-against-

THE CITY OF NEW YORK, DETECTIVE DEAN ROBERTS (Shield No. 05861), DETECTIVE GLENN GODINO (Shield No. 2756), POLICE OFFICERS JOHN DOES 1-10 (names being fictitious and presently unknown and intended to be employees of the New York City Police Department who were involved in plaintiff's arrest, detention, imprisonment and/or prosecution), DISTRICT ATTORNEY ROBERT T. JOHNSON, ASSISTANT DISTRICT ATTORNEY BRUCE BIRNS, ASSISTANT DISTRICT ATTORNEY BRIAN BURNS, ASSISTANT DISTRICT ATTORNEY ED TALKY a/k/a ED TULTY and ASSISTANT DISTRICT ATTORNEY MICHAEL COOPER,

Defendants.

- - - - - x

20 Vesey Street  
New York, New York

April 11, 2016  
2:39 P.M.

CONTINUED EXAMINATION BEFORE TRIAL OF GLENN GODINO, one of the Defendants in the above-entitled action, taken by the attorney for the plaintiff, pursuant to the Federal Rules of Civil Procedure and Stipulations between Counsel, held before Andrea Bloecker, a Notary Public within and for the State of New York, at the above time and place.

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2 A P P E A R A N C E S:

3

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15

BY: KAVIN THADANI, ESQ.  
16 File #2012-006428

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MR. THADANI: I just want to let the

3

record reflect that on behalf of defendants I

4

brought the original detective's file for

5

plaintiff counsels' inspection, and

6

plaintiff's counsel has spent some time

7

inspecting those documents.

8

MR. GROSS: Okay.

9

EXAMINATION BY

10

RICHARD GROSS, ESQ.:

11

Q Again, I'll pick this up later, but you caught

12

this case on the day that it happened, correct?

13

A Yes, I did.

14

Q Did you go to the area where the shooting

15

occurred on the same day as the shooting itself

16

occurred?

17

A Yes, I did.

18

Q The shooting took place around sometime after

19

5:00 on the 26th?

20

MR. THADANI: Objection.

21

A I'm not sure what time that day it was.

22

Q Just for the purposes now of identifying the

23

time and place that it happened, I'm going to show you a

24

copy of this document and ask you if you recognize what

25

it is.

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2 MR. THADANI: For the record, it's Bates

3 stamped NYC 004053. It's a two page document.

4 It's NYC 004053 and NYC 004054.

5 Q Do you recognize what that is?

6 A Yes.

7 Q What is that?

8 A It's a complaint drawn up by the Bronx

9 district attorney's office.

10 Q What is the terminology that you use when

11 you're describing that? Is that what you'd call a sworn

12 complaint?

13 A A complaint, yeah.

14 Q If you look at the top of that, you indicated

15 when you made out this complaint with the date and time

16 what the events were?

17 A This is approximately 5:48 P.M.

18 Q Assuming that that information is accurate,

19 does that give you some idea of how long after the

20 shooting you went to the scene?

21 MR. THADANI: Objection.

22 A I must have responded within around about that

23 time.

24 Q Within an hour or so of the shooting itself,

25 would you say?

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2           A           Most likely. I don't recall what time.

3           Q           Again, just to establish it in the record, the  
4 document I just showed you indicates that the shooting  
5 took place at 800 East 168th Street in the Bronx. Is  
6 that accurate, based on your recollection, or that  
7 general vicinity?

8           A           Yeah, close to it.

9           Q           Before that date of December 26, 2006, had you  
10 ever known of either personally but more likely  
11 professionally who Kenneth Creighton was?

12          A           Yes, I did.

13          Q           Did you know Dior Creighton or know of him  
14 before that date?

15          A           Yes, I did.

16          Q           Did you know of or know Kijafa Spruell prior  
17 to that date?

18          A           No.

19          Q           Did you know of Fawaz Terab, F-a-w-a-z,  
20 T-e-r-a-b, for any reason based on your police work prior  
21 to the date of this incident?

22          A           I don't think so, but I can't -- I've been in  
23 that bodega prior to this incident, but I don't know if I  
24 ever knew him.

25          Q           I'll get to this in more detail later, but in

1

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2    this case, there's somebody that has been identified as a  
3    confidential informant or a CI?

4 A Correct.

5 Q Did you know that person prior to the date of  
6 this incident?

7 A Yes.

8 Q Again, I'll get to this in more detail, but a  
9 CI is what is known as a handler, is that accurate  
10 terminology?

11           A           Yes.

12 Q During the time that you were a detective in  
13 the precinct up to the time of this incident, had you  
14 ever handled CIs personally?

15            A            Never.

16           Q       To your knowledge, was the handler of a CI,  
17   generally in the 42nd Precinct, somebody who would have  
18   been connected to narcotics?

19 MR. THADANI: Objection.

20           A           It doesn't necessarily have to be.  You could  
21   have a CI to do other investigations.  It doesn't  
22   necessarily have to be narcotics.

23 Q Had you had contact with the CI in this case  
24 prior to this incident, where he was ever a witness in a  
25 case?

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2

A

He wasn't a witness in the case, but he

3

provided me with information on a case one time prior.

4

Q

Approximately how long before December of 2006

5

was that?

6

A

Within a couple of years.

7

Q

You never worked narcotics, I assume?

8

A

No, I have not.

9

Q

Is it a fair statement that whatever the case

10

was that he provided you information for was not a

11

narcotics case?

12

A

Correct.

13

Q

Was it, to your knowledge, a homicide case?

14

A

It was not.

15

Q

Without getting into any detail, can you tell

16

me the type of crime that he was an informant, with regard

17

to?

18

A

Ironically, it was a non-fatal shooting in

19

front of the exact building that John Caldwell got shot

20

in the head with.

21

Q

As a result of that investigation, was there

22

an arrest made?

23

A

Yes, there was.

24

Q

Did that arrest result in either a conviction

25

or a plea?

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2           A           A plea.

3           Q           When that prior incident that he gave you  
4 information about occurred, who was his handler at that  
5 time, do you remember?

6           A           Yes. The same handler, John Elliott,  
7 Detective John Elliott.

8           Q           At any time either in the prior incident or  
9 this incident, did you have occasion to look at any of  
10 the records that the police department maintained with  
11 regard to the CI?

12          A           No.

13          Q           The original contact information on the  
14 earlier case was information that you got based on an  
15 inquiry made to his handler?

16                      MR. THADANI: Objection.

17          A           No, I didn't inquire to him, Detective  
18 Elliott, his handler. Detective Elliott called me to  
19 tell me that his CI had information on that case.

20          Q           Was it your understanding back in the time of  
21 that event, that the CI was a paid informant?

22          A           Yes, he was a CI. Yes, and CIs are paid.

23          Q           Pretty much all the time?

24                      MR. THADANI: Objection.

25          Q           Are CIs --

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2 A I never had a CI myself, but they're known to  
3 get paid.

4 Q Over the years, you've had, I assume, other  
5 cases where CIs have been involved in supplying  
6 information to you?

7 A As far as I could remember, this might be the  
8 only two -- he might be the only CI that I can recall  
9 that I've been involved with.

10 Q If you saw the CI on the street, would you  
11 recognize him?

12 MR. THADANI: Objection.

13 A I may be able to, but it's been -- I haven't  
14 seen him since this incident.

15 Q You indicated earlier in your testimony that  
16 you had looked at the surveillance video on more than one  
17 occasion, correct?

18 A Correct.

19 Q I think you indicated that you looked at the  
20 surveillance before you had any contact with Mr. Terab,  
21 is that a fair statement?

22 A I think I did.

23 Q On the occasions that you looked at the  
24 surveillance video, would that have been -- let's start  
25 with the first one. Would that have been in the presence

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2 of any other members of the force?

3 A Yeah. Detective O'Shea had gotten a video.  
4 So I believe I watched it with him. It could have been  
5 other people in the office, but I don't recall  
6 specifically who.

7 Q On what kind of equipment did you watch it  
8 on?

9 A VHS player.

10 Q There was one maintained in the detective part  
11 of the precinct, the 42nd?

12 A Yes.

13 Q Were there any technicians or people that work  
14 with video that were involved in this handling or setting  
15 up the video, before you saw it the first time?

16 MR. THADANI: Objection.

17 A Before I saw it?

18 Q Before you viewed it.

19 A Not that I'm aware of.

20 Q Do you remember you being the one who put it  
21 in the machine and turned it on and viewed it?

22 A No, I wasn't because I remember walking into  
23 the kitchen -- because that's where we had the VHS  
24 player -- and O'Shea already had it in the VHS player.

25 Q When you watched the VHS for the first time,



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2 was it only running at normal speed or were there

3 sections of it that had been slowed down when you viewed

4 it or you don't remember?

5 A I don't have an answer for that.

6 Q Do you know if that VHS was handled by any

7 personnel from NYPD in terms of isolating certain parts

8 of it, other than the detectives themselves who worked in

9 that field?

10 MR. THADANI: Objection.

11 A I believe still photos were created, if I'm

12 not mistaken, from that VHS tape.

13 Q Who would have done that? I don't mean the

14 specific person, but what category of personnel.

15 A Possibly TARU, but I just don't know. TARU,

16 That's a unit -- it's a technical response -- it's a unit

17 that we have that deals with videos.

18 MR. JAFFE: How do you spell that?

19 THE WITNESS: T-A-R-U.

20 A I don't remember if they did it, but I just

21 don't recall.

22 MR. JAFFE: Where is that?

23 THE WITNESS: It's right over the bridge

24 in Fort Totten in Queens.

25 Q Is that a boroughwide, citywide, something

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2 else?

3 A They're boroughwide. They're based out of  
4 Queens.

5 Q There's not a unit like that in the Bronx? If  
6 you want to have that done, you have to reach out to the  
7 Queens unit?

8 A Yeah.

9 Q How do you do that?

10 A You just call them up.

11 Q Is there a paper trail created when you bring  
12 them in, or no?

13 MR. THADANI: Objection.

14 A I don't think so. I don't recall it being in  
15 this case, but if you would bring a DVD or something and  
16 they just show up, you tell them what you want and they  
17 do it.

18 Q Did you go to them or do they come to the  
19 precinct or something else?

20 A If it's a video that needs to be downloaded --  
21 say if an incident happens and we have video that we  
22 can't retrieve, we call them and they'll come and  
23 retrieve the video for us and put it onto DVD. If it's  
24 something like a videotape or you have the actual DVR,  
25 you can bring it to them and ask them to do whatever you

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2 want them to do.

3 Q Do you know how that occurred in this case?

4 A I'm not sure.

5 Q Do you recollect whether you were the one that  
6 did it or another detective --

7 A I don't know.

8 Q -- or some other member of the force?

9 A I don't know.

10 Q After that initial viewing, did you look at  
11 the videotape again when Mr. Terab came into your office  
12 to be interviewed?

13 A I don't believe we showed Mr. Terab the  
14 videotape the first time he came into the office.

15 Q Would that first time that he came into the  
16 office be the same time that you took the signed  
17 statement from him on the 31st?

18 A Yes.

19 Q Again, I'll get into this in more detail, but  
20 you also asked him in addition to giving a signed  
21 statement to look at certain photo arrays?

22 A Yes.

23 Q He made positive identifications from those  
24 photo arrays?

25 MR. THADANI: Objection.

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2           A           Yes. I don't know if it was a photo array or  
3 an actual -- it might have been a photo array -- or an  
4 actual -- do you have it? I could look at it.

5           Q           This is a copy of it, but it's New York City  
6 Bates stamp number 004590, and I ask you if that is one  
7 of the photo arrays that Mr. Terab identified on that  
8 date.

9           A           Yes.

10          Q           The date that that identification was made,  
11 just for the record, was the 31st?

12          A           Correct.

13          Q           What layman's time?

14          A           Two P.M.

15          Q           You indicated that you don't believe you  
16 showed him the surveillance tape at the time that he was  
17 interviewed and gave the statement, or you did or  
18 something else?

19          A           I don't believe I did.

20          Q           You knew at the time that you interviewed  
21 Mr. Terab that it came from security cameras that were  
22 installed in his bodega, correct?

23          A           Correct.

24          Q           That was information that you had acquired  
25 pretty much the first day or at the latest the second day of

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2 the investigation?

3 A Correct.

4 Q When you responded to the scene for the first  
5 time that you went to that location, did you interview  
6 Mr. Terab at that time?

7 A I don't believe I did. I'm not sure. I don't  
8 think I did.

9 Q Do you remember seeing him on that first  
10 occasion in the store?

11 A I'm not sure.

12 Q Do you remember whether or not you went into  
13 the bodega on the first occasion that you went to the  
14 scene?

15 A I'm not sure if I did or not.

16 Q When you went to the scene as early as it was  
17 after the shooting, approximately how many detectives do  
18 you recollect responded, just by way of number?

19 A Me, Claude O'Shea, Pete Schwartz --

20 Q Roberts?

21 A I'm not sure if Roberts went or not. I'm  
22 gonna say maybe five, but I just don't recall.

23 Q When you first went to the scene, did you know  
24 at that time that this was your case, that you had caught  
25 it?

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2           A           Yes.

3           Q           In terms of the responsibility of taking care  
4 of what was going to be done in this investigation, that  
5 was on you, correct?

6           A           And the supervisors, whatever supervisors were  
7 there supervising.

8           Q           In a case such as this, how often would you  
9 consult with the supervisors in terms of the procedures  
10 that were going to be followed and the kinds of  
11 investigation that was done?

12                       MR. THADANI: Objection.

13          A           Often.

14          Q           Daily?

15          A           Possibly.

16          Q           On the initial visit to the scene, was a  
17 supervisor present? Did he respond as well, or she?

18          A           It had to be a supervisor. I just don't  
19 recall who the supervisor was at that time that I was  
20 working for.

21          Q           Would there be any records that would have  
22 been created on that first day that would reflect who the  
23 supervisor -- or any of the forms that would have been  
24 filled out by you or any of the other detectives where  
25 the supervisor would have signed off, who went to the

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2 scene?

3

MR. THADANI: Objection.

4

A Back then I don't think we even did bullets.

5

So I don't know if there would be something created. We

6

would type a DD5, and they don't necessarily have to sign

7

it that night. That could be signed a couple of days

8

later, whenever they get a chance to sign the report. So

9

I don't know if -- after this, they started doing these

10

bullets, they call them, just information --

11

Q Could you tell us what a bullet is?

12

A It's just information about a case, what's

13

going on. It's the supervisor's responsibility to do

14

the bullets, but I don't even think they were doing

15

bullets at this time. I can't think of a report that

16

they would put their name onto. Possibly -- I'm sorry,

17

I'm just remembering as we're talking. Their name could

18

go on an unusual report.

19

Q A 49?

20

A No, an unusual. It's a different report.

21

Q Let me show you this document and ask you if

22

you recognize what it is. I'm referring to -- and I'm

23

going to shorten this. Unless I say otherwise, these are

24

all the New York City Bates numbers. I'm just going to

25

give the last four digits. It's 4448. Would you take a

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2 look at that and tell me if you recognize what it is.

3 MR. THADANI: It's two pages for the  
4 record, 44- --

5 Q It's my understanding it's a district  
6 attorney's document, but I'm going to ask you if you've  
7 seen it before.

8 MR. THADANI: Actually it's three pages  
9 4448 through 4450.

10 A I don't think I've ever seen this before.

11 Q From looking at the first page of it, do you  
12 see there are some documents that are reflected as existing  
13 on that report?

14 A Yes.

15 Q The unusual, I think, is the first one, from  
16 12/27?

17 A Yes.

18 Q As long as I know that that's correct, that's  
19 all I need for now.

20 Would that document, you believe, reflect who  
21 the supervisor was who signed off on it?

22 MR. THADANI: Objection.

23 A Yes, it should have a supervisor's name who  
24 responded to the scene there.

25 Q That's all I need for now so I can locate it.



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2 A Okay.

3 Q Thank you.

4 Going back to the surveillance video for a  
5 moment, you indicated that you did not review it at the  
6 time that Terab was interviewed and gave a statement, or  
7 you did?

8 A I don't believe he viewed it.

9 Q I'm going to show you what has been marked as  
10 P00157 by my office and ask you to look at it and ask if  
11 you recognize what it is.

12 A Yes. It's an unusual occurrence report.

13 Q Based on that document, when would that have  
14 been created?

15 A On 12/26/2006.

16 Q The date of the shooting.

17 Would there be any information on there about  
18 who the supervisors were that were involved or existed at  
19 that time?

20 A Yes.

21 Q Why don't you read into the record the  
22 supervisor's name and if you can tell me what their job  
23 title was or what their function was?

24 A Squad Supervisor Sergeant Odland, O-d-l-a-n-d.

25 Q He would have been one of the squad

1

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2 supervisors for that particular shift?

3 A Yes.

4 Q There would be a squad supervisor for each  
5 shift that would be working or no?

6 A As long as you have that many supervisors,  
7 yes.

8 Q Any other supervisory personnel on that  
9 document?

10 A Yeah. A Captain McGuire. He responded to the  
11 scene.

12 Q Would that have been a detective captain or a  
13 uniform captain?

14 A It's under detective duty captain.

15 Q That would have been a boroughwide or --

16 A A zone.

17 Q A zone?

18 A Yeah.

19 Q What zone was the 42nd?

20 A Zone 7.

21 Q Approximately how many precincts would have  
22 been in that zone?

23 A Either three or four.

24 Q Where would the headquarters for that zone  
25 be?

1

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2           A           It's all in detective bureau, 1086 Simpson  
3 Street.

4           Q           That's a building that doesn't house a regular  
5 precinct, just detectives or just connected to the  
6 detectives?

7                       MR. THADANI: Objection.

8           A           I believe there's just detective units in  
9 there, special victims, Bronx robbery.

10          Q           You indicated earlier that you believed you  
11 looked at this video about four or five times. When  
12 would the next time have been -- again, I don't want  
13 necessarily the date, but on what occasion would you have  
14 looked at it again?

15          A           I had the bodega owner come back into the  
16 precinct to look at the video.

17          Q           After he gave you the statement, he  
18 identified people from the photo array?

19          A           Yes.

20          Q           Do you remember about how long after that it  
21 was?

22          A           I'm not sure. It was after I spoke with the  
23 CI.

24          Q           Did you record the date that you spoke to the  
25 CI anywhere?

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2           A           I'm not sure.

3           Q           Just to skip ahead for a moment, the CI's  
4 statement is contained in your memo book?

5                       MR. THADANI: Objection.

6           Q           Or somewhere else?

7           A           I think it might be in my memo book -- not  
8 memo book, steno book.

9                       MR. GROSS: This hasn't been marked yet  
10 so we have to mark it.

11                      MR. THADANI: We can mark that, that's  
12 fine, but let's indicate Bates pages.

13                      MR. GROSS: I'm just going to mark the  
14 document on the back, okay, or you want it on  
15 the front?

16                      MR. THADANI: The front's fine.

17                      MR. GROSS: It has a --

18                      MR. THADANI: Like on the top there's  
19 space, right.

20                      (Whereupon, a steno book was marked as  
21 Plaintiff's Exhibit 1, for identification, as  
22 of this date.)

23           Q           By the way, this memo book which has now been  
24 marked as Plaintiff's Exhibit 1 for identification, is  
25 that how all the books looked in the precinct at that

1

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2 time, with that kind of front on it?

3

MR. THADANI: Objection.

4

A They periodically get different ones. I don't

5

know if all of them look like that.

6

Q What's on the top of this, it says journalist's

7

pad.

8

A It's just another -- they probably got it

9

cheaper from someplace else, but it's a book with lines

10

that you can write in there, you know.

11

Q I'd like to show you a page from the memo book

12

and ask you if that's the first page of the statement you

13

took from the CI.

14

MR. THADANI: Can we just figure out a

15

Bates stamp page for that.

16

MR. JAFFE: I have to see it. I need to

17

see what it looks like.

18

THE WITNESS: (Handing)

19

MR. JAFFE: Okay.

20

MR. GROSS: I don't think it is Bates

21

stamped. The copy I have has no Bates stamp

22

either, and I got it from you guys.

23

MR. JAFFE: It's Bates stamped NYC

24

003525.

25

MR. THADANI: 3525? Right, 3525?

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2

MR. JAFFE: Yes.

3

Q While we've been searching for the copy,

4

you've been reading it?

5

A Yes.

6

Q That's the statement you took from the CI?

7

A Yes.

8

MR. THADANI: Hold on. Just to clarify,

9

how many pages --

10

MR. GROSS: I'm going to ask him that as

11

a specific question.

12

Q I'm going to ask you to flip through this and

13

indicate to me -- and then I'll make some notation about

14

it -- when that statement stops and something else

15

starts.

16

A It starts on this page --

17

MR. THADANI: Indicating Bates stamp

18

3525.

19

MR. GROSS: Right.

20

A -- and it goes to the next page.

21

MR. THADANI: Indicating 3526.

22

A It goes to this page.

23

MR. THADANI: Indicating 3527.

24

A I don't know -- I don't know if this is a

25

continuation of that, the next page. It says Wayne with

1

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2 the person.

3 Q Right.

4 MR. THADANI: That would be 3528.

5 MR. JAFFE: That's right.

6 A Definitely these three pages and I'm not sure  
7 about up here.

8 Q Where it says the part Wayne, do you know who  
9 the Wayne is that's referred to in that?

10 MR. THADANI: Again, just for the  
11 record, referring to 3528.

12 A This last page -- I'm sorry -- might be a  
13 continuation of that. I don't know if I ever positively  
14 IDed who Wayne was. I'm not sure.

15 Q Is it your belief, that paragraph that starts  
16 with Wayne was information you got from the CI or not or  
17 you don't know?

18 A I believe that was from the CI, this last  
19 page.

20 Q The portion below that that starts with Apartment  
21 2A, was that from the CI?

22 A I'm not sure.

23 Q In any case, looking at the beginning of the  
24 entry, starting with Quan, is there a date associated  
25 with that entry?

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2           A           No, I didn't write one down.

3           Q           You say you went over the surveillance video  
4 with Mr. Terab after you spoke to Quan on whatever date  
5 that was, correct?

6                       MR. THADANI:  Objection.  That's what he  
7 said.

8           Q           Was that your testimony or no?

9           A           Yes.

10                      MR. THADANI:  He said Quan in the  
11 questioning.

12                      MR. GROSS:  I said the entry beginning  
13 with Quan, I thought.

14           A           Can you rephrase it.  It's a little  
15 confusing.

16           Q           Let me rephrase it.  Yes.

17                      You indicated that you brought Mr. Terab back  
18 to the precinct and spoke to him again and showed him the  
19 video after you spoke with the CI?

20           A           Yes.

21           Q           At that time, you went through the video with  
22 him?

23           A           Yes.

24           Q           That was at least the second time that you had  
25 seen the video?



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2           A           Yes.

3           Q           When you looked at the video before you spoke  
4 to the CI, were you able to discern the point in the  
5 video, by looking at it yourself without any help from  
6 anybody, where the gun was passed? Could you see that on  
7 the video?

8           A           Yes. Well, I don't know if it's the actual  
9 gun you could see being passed or a movement of a gun  
10 being passed.

11          Q           You saw two people on the video and something  
12 being transferred and that you were able to tell just by  
13 looking at it yourself, correct?

14          A           Yes.

15          Q           When you looked at the video at that time, did  
16 you recognize the people that the object was being passed  
17 from and to?

18          A           I recognized Dior, but I couldn't tell who  
19 that other person that passed it was.

20          Q           You knew when you brought Mr. Terab back into  
21 the office that he had unequivocally identified the  
22 person who passed the gun to Dior as being Mr. Spruell,  
23 correct?

24                       MR. THADANI: Objection as to the use of  
25 unequivocally.

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2           A           He had said that he thought it was Mr. Spruell  
3   that passed it to him.

4           Q           He also had indicated to you where he was at  
5   the time that the passing occurred?

6           A           You're talking about the bodega owner?

7           Q           Right, Mr. Terab.

8           A           Yes.

9           Q           Where was he?

10          A           Behind the counter.

11          Q           The distance, approximately, from the counter  
12   to the place where the gun was passed was just a few  
13   feet, correct? It was pretty much directly in front of  
14   the counter?

15                      MR. THADANI: Objection.

16          A           No, it wasn't in front of the counter. It was  
17   more towards the end of the counter. They have shelving  
18   between the counter and the customers.

19          Q           In any case, when Mr. Terab gave you the  
20   statement, he didn't indicate to you at the time that he  
21   gave you the statement that he had any lack of certainty  
22   about who it was that passed the gun, correct?

23                      MR. THADANI: Objection.

24          A           No, he did not.

25          Q           I'm going to show you this document with Bates

1 GLENN GODINO 139

2 number 4657 on it and ask you to look at it and then I'm  
3 going to ask you a few questions about it. Let me know when  
4 you have finished reading it, and before I get to it,  
5 I'll do a little background question.

6 Are you finished reading the statement?

7 A Yes.

8 Q Let me also show you this document. I'll hand  
9 it to you. I'm going to ask you one question about this.  
10 This document right now which is Bates  
11 stamp -- I wrote it in, but it's 4590, and is this the  
12 photo array that Mr. Terab identified on that date?

13 A Yes.

14 MR. THADANI: Objection.

15 Q The time that that identification was made  
16 based on that record is when?

17 A 2 P.M., 1400.

18 Q What time did Mr. Terab give the written  
19 statement that you have in front of you, 4657?

20 A It looks like I headed the page at 2:15 P.M.

21 Q Is there a time that he actually signed off on  
22 it?

23 A 2:52 P.M.

24 Q The time that's indicated at the top of that,  
25 would that have been the time on December 31st that you

1

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2 actually started to write out the statement and you noted  
3 it there?

4

MR. THADANI: Objection.

5

A Approximately.

6

Q The time that he signed off on, it would have

7

been at 2:52, correct?

8

A Correct.

9

Q This statement would have been done, based on

10

the times indicated, after you showed Dior and he

11

identified him from the photo array?

12

MR. THADANI: Objection.

13

A Correct, because that was at 1400, 2 P.M.

14

Q The time that the photo array was shown to

15

Mr. Terab, did you construct that photo array on the same

16

day that you showed it to him?

17

A I don't know if I made that photo array or

18

not. I might have. I just don't recall it.

19

Q Do you know whether or not prior to your

20

talking to Mr. Terab, if anybody up to that point in time

21

identified Dior as being involved in this crime?

22

A The first time I spoke with him or the --

23

Q The first time you spoke to Terab, which was

24

on the 31st, correct?

25

A (No response).

1 GLENN GODINO 141

2 MR. GROSS: Let me withdraw the question

3 for a moment and back up.

4 Q The events took place on the 26th?

5 A Yes.

6 Q Sometime shortly thereafter Mr. Terab provided

7 you with the surveillance tape, but not personally, it

8 was picked up by another detective?

9 A Correct.

10 Q On the 31st, based on the record I've shown

11 you, Mr. Terab came in to the precinct and was

12 interviewed by you, correct?

13 A Correct.

14 Q What was the first thing you did when

15 Mr. Terab came in? Did you discuss with him what he knew

16 about the case?

17 A I'm not sure.

18 Q Based on your standard operating procedure,

19 given that this is when you started to collect

20 information from Mr. Terab, would the first thing that

21 you would do routinely be to interview the witness, put

22 him at ease and then try to find out what he knew about

23 the case?

24 MR. THADANI: Objection.

25 A Yes.

1

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2

Q

Is there any reason that you would have to believe that you followed some other procedure in this case?

5

MR. THADANI: Objection.

6

A

No, but I just don't recall. So I don't want to say yes and -- when I just don't recall, but that is something that would routinely be done, yes.

9

Q

Sometimes I know you won't recall particular things so I may ask you what your routine would have been under those circumstances generally, and if you think it wasn't, you can tell me.

13

A

Okay.

14

Q

Based on what you do recollect about this case, would it be a fair statement that based on your usual routines you would have first interviewed him, put him at ease and then tried to find out what he knew about the events?

19

A

Yes.

20

Q

Then you would get a lot more information than what would it wind up on the written statement because you would be looking to get the significant information, correct?

24

MR. THADANI: Objection.

25

A

I don't know what you mean about --

1 GLENN GODINO 143

2 MR. GROSS: Let me withdraw it. Bad

3 question.

4 Q When you would interview somebody, before you

5 would take a written statement from them, you would get a

6 lot of information trying to find out what they knew and

7 focus on the things that would be important to your

8 investigation, correct?

9 MR. THADANI: Objection.

10 A I would look for any information that they

11 were able to give me.

12 Q The statement that you drew here would have

13 been based on the interview that you had with him before

14 you started to write out this statement for him,

15 correct?

16 A Yes.

17 Q By the way, the bottom of the statement

18 indicates that you were the one that wrote out the

19 statement for him, correct?

20 A Correct.

21 Q When you wrote this statement for him, as you

22 were writing it, did he confirm each of the things that

23 you wrote on here?

24 A (No response)

25 Q Or you wouldn't have written it down, I

1

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2     assume?

3           A           He would tell me, I would write it down, and  
4     then when -- routinely, after I would be finished with  
5     the statement, before I have anybody sign it, this is  
6     routinely speaking, I would have them read it first and  
7     then sign it.

8           Q           When you wrote this statement, starting at the  
9     top of this, you would have put the date on it and the  
10    time that you recorded it in the upper right-hand corner,  
11    correct?

12          A           Correct.

13          Q           Then you would have asked him and written down  
14    the address where he lived, which would have been the  
15    second line on that, correct?

16          A           No, the second line is the address to the 42nd  
17    Precinct.

18          Q           I'm sorry, where it was given.  
19                       Then his name and his address below that,  
20    correct?

21          A           Correct.

22          Q           That information as to his address was  
23    information you got from him doing the interview?

24          A           Correct.

25          Q           Then you put down there your identifying



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2 information and your shield number and your assignment,  
3 correct?

4 A Correct.

5 Q Then you wrote on 12/26/06 after 5 P.M., and  
6 that would have been information that he would have given  
7 you?

8 A Yes.

9 Q The witness, being Mr. Terab, saw Dior and  
10 Kijafa walking into the store, is that correct?

11 A Correct.

12 Q Let me stop there for a moment.

13 You showed Mr. Terab on that occasion a second  
14 photo array where he identified Kijafa as the person who  
15 passed the gun to Dior, correct?

16 MR. THADANI: Objection.

17 A I believe I did.

18 Q When you interviewed Mr. Terab, you didn't  
19 have the photo arrays already prepared, did you, because  
20 you didn't know at that point who he was going to name,  
21 correct?

22 MR. THADANI: Objection.

23 A Correct.

24 Q Up to the point that you met with Mr. Terab,  
25 you had no firsthand or even secondhand information about

1

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2     who the people were who were involved in the passing of  
3     the gun in the store, correct?

4           A           I believe we knew it was Dior passing the gun  
5     because we recognized him from the video, but I had no  
6     idea who the second person who handed the gun was.

7           Q           Until you spoke to Mr. Terab, you didn't know  
8     until he named him, Kijafa, as to who the person was who  
9     passed the gun to Dior, correct?

10                      MR. THADANI:  Objection.

11           A           Correct.

12           Q           You had not yet spoken to the CI, correct?

13           A           Correct.

14           Q           At that point when you created that photo  
15     array that had Kijafa in it, you were able to get his mug  
16     shot based on the information that came from Mr. Terab,  
17     correct?

18           A           Correct.

19           Q           Then you took that mug shot and you found five  
20     other similar looking people and you put that into the  
21     photo array and you showed it to him, correct?

22           A           I don't know if I'm the one who put the photo  
23     array together, but a photo array was put together and it  
24     was shown to him.

25           Q           Whether you did it personally or not, created

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2 the photo array and/or pulled the mug shot, it was done  
3 at or about the time that this took place on December 31,  
4 2006, correct?

5 A Correct.

6 Q I'm going to show you NYC 004747 and ask you  
7 whether or not that is the photo array that Mr. Terab  
8 identified Mr. Spruell as the one who passed the gun to  
9 Dior Creighton.

10 A Yes.

11 Q Is that dated?

12 A Yes.

13 Q Is it timed?

14 A Yes.

15 Q What time is indicated on there?

16 A 1500 hours, which is 3 P.M.

17 Q He looked at the photo array for Dior  
18 approximately an hour before he did the one on Spruell?

19 MR. THADANI: Objection.

20 A Yes.

21 Q The statement was written after the first  
22 photo array was shown to him but before the second?

23 MR. THADANI: Objection.

24 Q Given that you started the photo array at 1415  
25 hours?

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2           A           I started the written statement at 1415  
3 hours.

4           Q           Isn't that what I said?

5           A           No, you said photo array.

6           Q           The written statement was taken between  
7 showing him the first photo array of Dior and the second  
8 one of Spruell, correct?

9                       MR. THADANI: Objection.

10          A           Correct.

11          Q           Going back to the signed statement for a  
12 moment, the witness indicated that -- I'm continuing to  
13 read -- Kijafa pulled out a silver and black gun and  
14 handed the gun to Dior, correct?

15          A           (No response)

16          Q           I read correctly?

17          A           Yes.

18          Q           That the color of the gun was information that  
19 you got from Mr. Terab, correct?

20                       MR. THADANI: Objection.

21          A           Yes.

22          Q           You had no other knowledge about what the gun  
23 looked like up to this point in time or from any other  
24 source for it, correct?

25          A           Correct.

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2

Q Then he goes on to say and handed the gun to

3

Dior. I assume that when you interviewed him you asked

4

him specifically before you wrote this down whether he

5

actually saw that occurring, is that a fair statement?

6

A He told me, you know, what he saw and I wrote

7

it down. I don't know if I again asked him did you

8

specifically see it. I wrote down what he told me.

9

Q Based on the way this is written, did you have

10

any doubt at this point -- Mr. Terab specifically told

11

you at the time that you created the statement or

12

immediately in front of it that he saw Kijafa pull out a

13

silver and black gun and hand it to Dior?

14

MR. THADANI: Objection.

15

Q That was the information he gave you?

16

A That was the information he gave me.

17

Q Then it goes on, Dior took the gun and walked

18

into an aisle and pulled the gun to make it ready to go.

19

That would have been information that you would have

20

gotten from Mr. Terab? You had no other basis for

21

getting that information at that time, correct?

22

MR. THADANI: Objection.

23

A Correct.

24

Q You wrote after that in quotes -- which I

25

assume means that he said it exactly the way you wrote

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2 it -- he also heard the noise. Did you state that  
3 fairly?

4 MR. THADANI: Objection.

5 A Well, I put he. I shouldn't have put he. I  
6 should have put I heard the noise. I stuck the he in there  
7 and I shouldn't have.

8 Q The fact is when you put the quotes there it  
9 was meaning that you weren't interpreting what he said,  
10 those were the exact words that he said?

11 A Yes.

12 MR. THADANI: Objection.

13 Q Then it goes on, then Dior turned and went  
14 toward the front door of the store, put on his hoodie and  
15 walked out of the store with Kijafa, is that correct?

16 A Correct.

17 Q Then you wrote that he said approximately five  
18 to ten seconds went by when he heard gunshots,  
19 approximately six or seven shots. Is that information  
20 that you got specifically from Mr. Terab?

21 A Yes.

22 Q Then it goes on, he looked out the door and  
23 saw Dior and Kijafa run toward Home Street, and that  
24 would again have been information that he indicated to  
25 you that he observed?

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2           A           Yes.

3           Q           Then it says end of statement and then it says  
4 Detective Godino wrote this statement for the witness?

5           A           Yes.

6           Q           Given that you had looked at the video before  
7 you wrote this statement, did you observe anything, at  
8 the time that you took the statement, on the video that  
9 led you to believe that there was anything inaccurate  
10 about what Mr. Terab said that he observed?

11                       MR. THADANI:  Objection.

12          A           No.

13          Q           The information that you got to construct the  
14 photo array showing Mr. Spruell, which is number 4747,  
15 was information that you got from Mr. Terab, correct?

16          A           Correct.

17          Q           Based on that information that he gave you,  
18 you went to a computer and found Mr. Spruell's mug shot,  
19 correct?

20                       MR. THADANI:  Objection.

21          Q           When I say you, you or another police  
22 officer?

23          A           Yes.  Yes.

24          Q           Then you took that mug shot and you or  
25 somebody else from the department got five other

1

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2 relatively similar looking people and created the photo  
3 array that's shown in that document, correct?

4 A Yes.

5 Q Based on that photo array, Mr. Terab picked  
6 out Mr. Spruell, correct?

7 A Correct.

8 Q That photo array doesn't identify the people  
9 by name, does it?

10 A No, it does not.

11 Q That's done purposely so that the person who's  
12 making the identification will be making it solely on the  
13 photographic evidence that's before them, rather than  
14 information he might know about the person's name,  
15 correct?

16 A Correct.

17 Q Did you learn from Mr. Terab at any time on  
18 the 31st that Mr. Terab had indicated to you that both  
19 Dior and Spruell were frequent visitors to the bodega?

20 MR. THADANI: Objection.

21 A He indicated that Spruell and Dior were always  
22 together.

23 Q Also that he had seen them on many occasions  
24 in the bodega?

25 A (No response)



1 GLENN GODINO 153

2 MR. GROSS: Withdrawn.

3 A He said --

4 THE WITNESS: Oh, sorry.

5 MR. GROSS: Let me re-ask it.

6 Q Did he indicate to you that he knew them from

7 having relatively frequent contact with them, however he

8 put it, in the bodega as customers?

9 MR. THADANI: Objection.

10 Q Or hanging out there?

11 A Yes.

12 Q When you took the interview, you knew from

13 what he had indicated to you that he knew these people's

14 appearance very clearly from having seen them on many

15 earlier occasions?

16 MR. THADANI: Objection.

17 A Yes.

18 Q Based on this information that you got at that

19 time, the signed statement, his identification of the two

20 people involved in passing the gun, having heard the

21 shots, did you have probable cause at that point in time

22 to charge Mr. Spruell with having passed the gun?

23 MR. THADANI: Objection. Calls for a

24 legal conclusion.

25 A I would think so, yes.

1 GLENN GODINO 154

2 Q As part of your job as a detective, and you're

3 currently very experienced at this point in time, part of

4 the things that you're required to do with your training

5 and background and experience is to determine at what

6 point in the case there's probable cause to make an

7 arrest, correct?

8 MR. THADANI: Objection.

9 Q It's part of your job?

10 A Correct.

11 Q In fact, other than the information that you

12 allegedly got from the CI at a later time, you never had

13 any other witness at any time during this investigation,

14 did you, to indicate that Dior was the shooter?

15 MR. THADANI: Objection.

16 A I don't think so, no.

17 Q Without the CI, although you had information

18 from Mr. Terab that Dior got a gun and he went outside,

19 you had at that point and never after that ever developed

20 any information that directly pointed to Mr. Dior

21 actually having done the shooting, correct? I said

22 Mr. Dior, Dior Creighton. Is that a fair statement?

23 A That's fair.

24 Q Other than the information that was written in

25 the spiral notebook that we just identified as being the

1

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2 entry you made based on your interview with the CI,  
3 correct?

4 A (No response)

5 Q The information in the spiral notebook that we  
6 talked about a little earlier was information that you  
7 got directly from the CI and recorded in the --

8 You don't call it a spiral? You call it --

9 A A spiral notebook.

10 Q -- in the spiral notebook?

11 A Yes.

12 Q Besides that spiral notebook, did you ever  
13 create any document, any police record, that documented  
14 what the CI had told you when you recorded it in the  
15 spiral notebook?

16 A I don't believe I did.

17 Q There is no doubt in your mind, is there,  
18 because the entry is not dated in the notebook, that you  
19 got the information from the CI where he claimed that Ken  
20 Creighton passed the gun to Dior after Terab had picked  
21 out Spruell as the one who passed Creighton the gun, is  
22 that accurate, in terms of the sequence of events?

23 MR. THADANI: Objection.

24 A I believe that's the way it happened.

25 Q Dean Roberts, Detective Roberts, you indicated

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2 he's still with the department?

3 A No, he's retired.

4 Q I know he was one of the detectives working on  
5 this case. Was he the assistant or did he have a  
6 particular name as being somebody associated with this by  
7 title?

8 A No.

9 Q So he was just a detective who was involved in  
10 the case?

11 A Yes.

12 Q Again jumping ahead for a moment, when arrests  
13 were made in connection with this case, Detective Roberts  
14 was the one who arrested Ken, correct?

15 A Yes.

16 Q You arrested Dior?

17 A Yes.

18 Q In the procedures that were followed in the  
19 42nd Precinct Detective Squad back in 2006 and forward,  
20 was there a person who would have been assigned to  
21 homicide investigations or likely known as a riding ADA,  
22 are you familiar with that term?

23 A They have the -- the Bronx District Attorney  
24 Office has a felony DA that's on paper duty, and whoever  
25 has the duty at that time, if he had -- he would call

1 GLENN GODINO 157

2 them if he needed anything for that particular -- for

3 that particular case. I don't think it's the same person

4 every single day. They rotate the duty homicide.

5 Q Was there a policy in the 42nd Precinct, and

6 for that matter in the entire Bronx, if you know, as a

7 policy, that before an arrest was made for a homicide a

8 DA would have to approve it?

9 MR. THADANI: Objection.

10 A Yes.

11 Q As far as you know, is that a procedure that's

12 unique to the Bronx?

13 MR. THADANI: Objection.

14 Q In terms of the five boroughs.

15 A I'm not sure. I haven't made a homicide

16 arrest in Manhattan, but I -- I'm not sure.

17 Q In any case, if you thought that you had

18 probable cause to make an arrest of somebody, before you

19 made that made arrest, you would confer with an ADA?

20 A On this particular case, because somebody died

21 or was likely to die, it waited.

22 Q I'm sorry, I didn't hear the last.

23 A It waited. It waited.

24 Q Waited for what?

25 A First we needed somebody who saw Dior

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2 shooting. So we wanted a witness to see -- witness the  
3 shooting because the witness from the bodega didn't  
4 witness the shooting. He witnessed the passing of the  
5 gun, them being in the store, but he didn't witness -- he  
6 heard the shots, but he didn't actually witness anybody  
7 shooting the gun.

8 Q Skipping for a moment, Dior Creighton's  
9 implication in this case, at the time that you  
10 interviewed Terab, got the statement, got the identities  
11 from the photo arrays, the evidence, they clearly  
12 indicated that he had committed a crime, correct?

13 MR. THADANI: Objection, the  
14 characterization of that.

15 A That Dior was in possession of a weapon,  
16 yes.

17 Q Right.

18 Based on the evidence that you got from Terab,  
19 whether he fired the shots or not, right after the weapon  
20 was passed shots were heard by the same witness,  
21 correct?

22 A Correct.

23 Q As you told me earlier, you had at that point  
24 a basis to arrest Mr. Spruell based on the evidence you  
25 had for the crime of facilitation and for possession of a

1

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2 gun, isn't that a fair statement?

3 MR. THADANI: Objection.

4 A Yes.

5 Q If you were going to make that arrest in  
6 connection with an event that had turned out to be a  
7 homicide you would need an ADA to sign off on that  
8 arrest, correct?

9 A Correct.

10 Q Do you have a personal recollection of  
11 consulting with an ADA in connection with this  
12 investigation?

13 A Yes.

14 Q Who was the DA that you first spoke to about  
15 this case?

16 A I don't know if a DA came to the scene for  
17 this, but it ended up being assigned to Bruce Birns. I  
18 don't know if he actually responded that day or if he  
19 just inherited it afterwards.

20 Q When you say he inherited it, he inherited  
21 and, in fact -- and I'll get to it when we get to that  
22 point chronologically, but he's one of the people that  
23 signed off on the arrests in this case, correct?

24 MR. THADANI: Objection.

25 A Ultimately it's up to the bureau chief to give

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2 the authorization to give permission to make the arrest.  
3 He would have had to have gone to his bureau chief,  
4 discussed the situation, presented the evidence and then  
5 get permission.

6 Q The evidence that he would have gotten to  
7 discuss with the bureau chief would have primarily come  
8 from you and the other detectives that had investigated  
9 the case up to that point, correct?

10 A Correct.

11 Q I can bring it up now, but I'll get to it  
12 later. For the purposes of my question, if I told you  
13 that Bruce Birns and Talty, T-a-l-t-y, who I think was  
14 the bureau chief who signed off on the arrests for this  
15 case, would that sound correct to you? I'll show you the  
16 document later.

17 MR. THADANI: Objection.

18 A That would sound correct.

19 Q Basically in this case, before you arrested  
20 either Ken or Dior, the district attorney's office had  
21 indicated it was okay to go ahead and do that and  
22 authorized the arrest, correct?

23 A Correct.

24 Q Based on this case or procedures, if you don't  
25 remember specifically, how would the information be



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2     imparted to the ADA who would eventually go to a  
3     supervisor? Would that be from speaking to you and other  
4     detectives on the case, or just you or something else?

5           A           Me and other detectives.

6           Q           Do you have a specific recollection about when  
7     the first time you spoke to an ADA in connection with  
8     this case was?

9           A           No.

10          Q           Again, following procedures, when you got the  
11     information from Mr. Terab that we've been talking about,  
12     the IDs and the signed statement, there was enough  
13     information there -- even though you may not have had the  
14     evidence at that point in time to show that Dior was the  
15     shooter, you certainly had enough information to go to  
16     the DA and discuss with him arresting both Spruell and  
17     Dior for the possession of the gun, which is a crime in  
18     and of itself, correct?

19                      MR. THADANI: Objection.

20          A           I don't know that I went and spoke to him at  
21     that point.

22          Q           I'm not asking you that. I understand.

23                      You certainly had enough information at that  
24     point to go to the DA and say I think I have probable  
25     cause to arrest Spruell for the possession, facilitation

1

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2 and discuss it with him if you had chosen to do so at  
3 that point, correct?

4 MR. THADANI: Objection.

5 A Yes.

6 Q That was because you had determined at that  
7 time that you certainly had probable cause to arrest both  
8 of the people on at least some of the charges if not the  
9 shooting itself, fair statement?

10 MR. THADANI: Objection.

11 A Fair.

12 Q I'll ask you specifically, but let me ask you  
13 first generally. During this period of time, 2006 and  
14 2007, would you be investigating one or more than one  
15 homicide at any given moment?

16 MR. THADANI: Objection.

17 A As the lead investigator you're talking about?

18 Q Let's start with as a lead investigator and  
19 then I'll expand on that.

20 A Normally you wouldn't, unless you had the  
21 homicide and then you come in another night and nobody  
22 else is working you would get stuck with it, but normally  
23 we would take turns. So it usually wouldn't happen.

24 Q So you would be the lead detective, except for  
25 unusual circumstances, on one case at a time?

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2

A Yes.

3

Q One homicide case?

4

A One homicide.

5

Q In addition to that, would you also be, again

6

based on routines, assisting on a number of other cases,

7

when you would be working as a detective in the 42nd at

8

that time period?

9

A I didn't understand your question. I'm sorry.

10

I'm getting confused.

11

Q I didn't either. I take it back.

12

Based on what would be going on in the

13

precinct back in 2006 and 2007, in addition to being the

14

lead detective, would you also be assisting in other

15

investigations?

16

MR. THADANI: Objection.

17

A Yes.

18

Q Would there be records that would be

19

maintained about how many investigations you would have

20

been working on from say December 26 to the end of the

21

month of January, where you would be assisting?

22

A I don't think there's a specific record. You

23

would have to go into each case to see if I typed a DD5

24

on a particular case to assist.

25

Q As a general proposition, do you have any

1

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2 recollection of back in that time frame -- and I have no  
3 idea how busy the precinct was then -- approximately how  
4 many homicides you would have been working on in one  
5 respect or another during that time frame?

6 A Probably only one. I don't know if we had  
7 another one right after that, but I would say one.

8 Q As the assigned detective for the case, would  
9 you review the files regularly to see what, if anything,  
10 had occurred from the last time you worked on it?

11 MR. THADANI: Objection.

12 A I'm not sure if I would.

13 Q Given this investigation and the number of  
14 detectives that were working on it, you would have to  
15 from time to time to know the state of the investigation,  
16 check the case folder or talk to the detectives about  
17 what had happened since the last time you worked on it to  
18 know what stage the case was in, correct?

19 A Correct, but if anybody did any work on it,  
20 they would hand me, or at least leave the DD5 on my desk  
21 to show what they did.

22 Q As a general proposition back in that time  
23 frame, before the other detectives that were working on  
24 the case would put DD5s in the folder, they would cross  
25 your desk so that you would be the one who would actually

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2 put them in there, was that the standard operating  
3 procedure?

4 MR. THADANI: Objection.

5 A Yes.

6 Q Before a DD5, regardless of who created it,  
7 wound up in the case folder, it would generally pass over  
8 your desk before it wound up there because you had put it  
9 in, correct?

10 A Correct.

11 Q Absent of what we already discussed, where  
12 some of the records have gone missing, as a general  
13 proposition, you would expect that all the records that  
14 were created in connection with this investigation of  
15 Caldwell's murder went into that particular case file,  
16 correct?

17 A Correct.

18 Q Was it standard procedure and good procedure  
19 for the detective that if a witness had pertinent  
20 information to give about a homicide case that a  
21 detective would prepare a DD5 to memorialize it?

22 MR. THADANI: Objection.

23 A It should.

24 Q If a witness had something to say about an  
25 alibi or if a witness gave information about an alibi,

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2     whether it came from the accused or from some third  
3     person, was it standard practice to make a record of that  
4     and make sure it got into the case folder?

5                     MR. THADANI:  Objection.

6             A             I guess it should.

7             Q             At any point, did you become aware of the fact  
8     that Ken Creighton claimed to have had an alibi for  
9     the time when the shooting took place and when the gun  
10    was passed?

11            A             I don't recall if I did.

12            Q             If you were given that information, would it  
13    have been good practice to make sure that that alibi  
14    information, whether it came from the alibi witness  
15    themselves or from the accused, wound up in the case  
16    file?

17                     MR. THADANI:  Objection.

18            A             Yes.

19            Q             That kind of information would be one of the  
20    classes that would be Brady information, correct?

21                     MR. THADANI:  Objection.

22            Q             Something that you would be required to let  
23    the DA know so he could fulfill his Brady obligations,  
24    fair statement?

25                     MR. THADANI:  Objection.

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2           A           Yes.

3           Q           Other records such as photographs, lab  
4   reports, vouchers and any other significant information  
5   should go into the case file, correct?

6           A           Correct.

7           Q           In the Bronx, in that time frame -- and if you  
8   remember specifically, that's fine, otherwise I'll ask  
9   you about your routines -- given this case involved a  
10   homicide and a second person being shot and injured, did  
11   you confer with the ADA from time to time, whoever that  
12   would have been, regarding the progress of the  
13   investigation?

14                       MR. THADANI:  Objection.

15          A           I don't have a recollection on how many times  
16   we did, but I could remember consulting with ADA Bruce  
17   Birns.  I just don't remember how many times I consulted  
18   with him.

19          Q           Can you give me an approximation of the first  
20   time that you spoke to Birns about the progress of the  
21   investigation?

22          A           I don't recall.

23          Q           Do you have a recollection of having spoken to  
24   Birns about the information that had been conveyed to you  
25   and the identifications that were made to you by

1

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2 Mr. Terab?

3 A I don't have a recollection of that.

4 Q Do you have a recollection of having spoken to  
5 Mr. Birns about the information you got from the CI at  
6 some point in time?

7 A Yes.

8 Q At the time that you spoke to Mr. Birns about  
9 the information you had gotten from the CI, did you also  
10 make him aware of the information that you had gotten  
11 from Terab?

12 A I don't recall if I did or not.

13 Q Would it have been good practice, based on  
14 your years of experience as a detective, to make  
15 Mr. Birns aware of both the information you got from the  
16 CI as well as the information you got from Mr. Terab in  
17 describing what had gone on in this investigation up  
18 until that time?

19 MR. THADANI: Objection.

20 A Yes.

21 Q Do you have any reason to believe that you  
22 didn't follow the good practices that you just  
23 described?

24 A No, I provided the whole case folder to ADA  
25 Birns. So everything that's in this case folder was



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2 provided to him.

3 Q No, I understand that, and I know --

4 A I just don't have a recollection of discussing  
5 that with him.

6 Q The time that you provided the case folder to  
7 the ADA Birns, was that before or after any arrests had  
8 been made in connection with this case?

9 A I'm not sure when he got the whole case  
10 folder.

11 Q Do you have a reasonable assurance as you sit  
12 here that you spoke to him about the progress of the  
13 investigation before Ken was picked up?

14 A Yes.

15 Q When you spoke to him -- again if you don't  
16 remember specifically, based on your usual procedures --  
17 you would have discussed both the information you got  
18 from Terab and the information you got from the CI,  
19 correct?

20 A Correct.

21 MR. THADANI: Objection.

22 Q One of the documents I looked at -- and I'm  
23 jumping around a little bit, forgive me -- is called a  
24 lineup report identifier. Do you know what that is?

25 A (No response)

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2           Q           It's in there somewhere, but I don't want to  
3     take the trouble to take it out.

4           A           I think it might be something that's generated  
5     when you do a photo array, but we didn't do a lineup, so  
6     it wouldn't have anything to do with a specific lineup.

7           Q           That was my question.

8                       In police jargon -- and I noticed it from some  
9     of the DA files -- a lineup can be either an in-person  
10    lineup or what's called a corporeal, c-o-r-p-o-r-e-a-l,  
11    lineup, which is a photo array?

12                      MR. THADANI:  Objection.

13          Q           There are records I saw -- and I'll go through  
14    them with you, or maybe not -- that indicated there were  
15    corporeal lineups conducted in this case, that would have  
16    not been somebody viewing live people lineup, correct?

17                      MR. THADANI:  Objection.

18          A           That's correct because we didn't do a lineup.  
19    I don't know why they used that term.

20          Q           I don't either.  Just to confuse us.

21                      Apparently both photo arrays and live lineups  
22    get the designation, at least on some of the paperwork,  
23    they're called lineups and they distinguish them by using  
24    other words.

25          A           This is the first I think I'm hearing about

1

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2 that.

3 Q When the decision was made to arrest Ken --  
4 and again you indicated that the DA signed off on that --  
5 had you discussed with Birns that Terab had positively  
6 identified Spruell and not Ken as the person who passed  
7 the gun?

8 MR. THADANI: Objection.

9 A I'm not sure if I did.

10 Q Is there any reason you can think of as you  
11 sit here right now why at the time that the decision was  
12 made to arrest Ken that you would not have informed the  
13 ADA that there was information by a witness that  
14 indicated somebody else had passed the gun?

15 MR. THADANI: Objection.

16 A No.

17 Q Is it a fair statement that you recognize that  
18 that information that you got from Terab is Brady  
19 information that had to be imparted to the DA's office --

20 MR. THADANI: Objection.

21 Q -- because it's potentially exculpatory?

22 MR. THADANI: Objection. Calls for a  
23 legal conclusion.

24 A Yes.

25 Q If you didn't inform the ADA that Terab had

1

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2 made a positive identification of somebody other than  
3 Ken, you would have been remiss in your responsibilities  
4 under Brady, correct?

5 MR. THADANI: Objection.

6 A I just don't recall me having a physical  
7 conversation. I know I provided everything to the DA's  
8 office. I just don't recall having a conversation.

9 Q I want to distinguish in my questions between  
10 physically giving him the file and the conversations that  
11 you had because you indicated in your testimony that you  
12 consulted with the ADA before you made the decision to  
13 arrest Ken, correct?

14 A Correct.

15 Q Now what I'm asking you is if you had not told  
16 the ADA at the time that the decision was made to arrest  
17 Ken that there was existing exculpatory information that  
18 would have been a violation of your responsibilities  
19 under Brady, correct?

20 MR. THADANI: Objection. It calls for a  
21 legal conclusion.

22 A Yes.

23 Q To your knowledge, whether you imparted the  
24 information or it came from another source, including the  
25 paperwork in this case, was ADA Birns made aware at any

1

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2 time before Ken's arrest that Terab had IDed Spruell as  
3 the one who passed the gun?

4 MR. THADANI: Objection.

5 A I'm not sure.

6 Q When you spoke to the CI, do you have a clear  
7 recollection of that encounter as we sit here right  
8 now?

9 MR. THADANI: Objection.

10 A I had spoken to him twice and I had brought the  
11 CI to ADA Birns' office.

12 Q On the first or second occasion?

13 A On the second occasion.

14 Q Let me go back to the first occasion for a  
15 moment.

16 I gather from what we discussed earlier, but  
17 let me ask you the question, do you have a recollection  
18 specifically about when you spoke to the CI, say a  
19 particular --

20 A The specific date?

21 Q Yes.

22 A No.

23 Q We've established that there's no doubt that  
24 you spoke to the CI after you spoke to Terab, correct?

25 A Yes.

1

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2

Q When you spoke to the CI, did you make the CI aware of the fact that another person had identified somebody other than Ken, as the person who passed the gun to Dior Creighton?

6

A Yes, I did.

7

Q Did you ever go over the video that you had possession of with the CI before Ken was arrested?

9

A I'm not sure.

10

Q Would you agree that based on the evidence that had been accumulated at the point when you took the statement from the CI and recorded it in your notebook that either Terab or the CI was wrong about who had passed the gun to Dior?

15

A Could you repeat that. I'm sorry.

16

MR. GROSS: Read that one back.

17

(Whereupon, the requested portion of the record was read back by this reporter.)

19

MR. THADANI: Objection.

20

A Yes.

21

Just to answer a question that you said did I show him the video. Now I remember showing the CI the video because he pointed to behind the shelving where he was standing at the time.

25

Q Behind the shelving, you mean near the

1

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2 entrance to the store?

3 A Yeah, by the front door. So I did show him  
4 the video.

5 Q Do you remember on which occasion or  
6 approximate time that that occurred?

7 A It was the occasion that he came to my office.  
8 I just didn't put a time down and a date on when he came  
9 in.

10 Q That was my next question.

11 When you interviewed the CI, he came to the  
12 precinct?

13 A Yes, he did.

14 Q Was the arrangement for him to come to the  
15 precinct made by his handler?

16 A Yes.

17 Q Up to the time that you spoke to the CI in  
18 your office, whenever that was, had you gotten any  
19 specific information from the handler or by a phone  
20 conversation with the CI about what he knew about the  
21 case?

22 A No.

23 Q At that point when the CI came into the  
24 office, all you knew was that the CI knew something about  
25 the shooting and you got that from his handler?

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2

A Yes.

3

Q Do you know whether or not once that contact

4

was made by the handler with you about the CI giving

5

information that that would have been something that

6

would have caused the payment to be made to him for the

7

information?

8

MR. THADANI: Objection.

9

A I don't know when they paid informants. I've

10

never had a paid informant so I don't have an answer to

11

that question.

12

Q Do you know as you sit here right now that

13

both Terab and the CI have testified under oath as to who

14

they saw pass the gun?

15

MR. THADANI: Objection.

16

A I don't know.

17

Q Let me break it down.

18

You know for certain, do you not, that Terab

19

testified before the grand jury in this case in

20

connection with Ken's indictment, correct?

21

MR. THADANI: Objection.

22

A No, I don't believe Terab went to grand

23

jury.

24

Q I'm sorry. I meant the CI.

25

MR. GROSS: Let me do that again. I'll



1

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2

withdraw it. Start over.

3

Q You know, do you not, that the CI testified

4

before the grand jury in connection with Ken's

5

indictment?

6

A Yes.

7

Q You were made aware of the fact that Mr. Terab

8

testified under oath at a deposition in connection with

9

this civil suit, correct?

10

A Yes.

11

Q You know that both of those people have

12

testified under oath as to a different person having

13

passed the gun to Dior, correct?

14

MR. THADANI: Objection.

15

A I didn't get any information on what they

16

testified in a deposition. I know the information the CI

17

gave to the grand jury, and I'm not aware of the CI going

18

to a deposition as of yet.

19

Q If you take a signed and written statement

20

like this from a witness, whether it's Mr. Terab or

21

somebody else, and it's determined that they lied on that

22

statement, is that a crime, to your knowledge?

23

MR. THADANI: Objection. Calls for a

24

legal conclusion.

25

A Not that I know of.

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MR. GROSS: Off the record.

3

(Whereupon, a discussion was held off

4

the record.)

5

Q

When you had the conversation with the CI in

6

your office, was anybody else present?

7

MR. THADANI: Objection. Which time?

8

A

Yes.

9

THE WITNESS: Oh.

10

MR. GROSS: I'm sorry?

11

MR. THADANI: Which time, just

12

clarify.

13

MR. GROSS: The first one. He said the

14

second one was at the DA. Maybe I didn't make

15

the distinction clear.

16

A

No, that's correct.

17

His handler was in the room also.

18

Q

Were any other detectives in the room?

19

A

I don't believe there were.

20

Q

When the CI gave the information to you in the

21

office, is that the time that you recorded it in your

22

notebook?

23

A

Yes.

24

Q

Was there anything --

25

A

Wait. I don't know if that's the time when he

1

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2 was in my office or when he was in the office with ADA  
3 Birns, because he didn't want me writing anything down.  
4 He didn't want to put his name to anything. He -- so I  
5 don't know if I just jotted that down when he was talking  
6 or when he was talking to ADA Birns I put that in my  
7 book, but I'm not sure which time that was from.

8 Q When he spoke to ADA Birns in connection with  
9 this case, was that before Ken was arrested?

10 A Yes.

11 Q How long after that conversation with ADA  
12 Birns do you recollect that the arrest was actually --  
13 not done but when it was decided to arrest?

14 A I don't recall exactly, but it was more than  
15 one day 'cause ADA Birns ended up calling me up to tell  
16 me we had authorization.

17 Q At the time that ADA Birns called you up to  
18 tell you that you had authorization to arrest Ken, did he  
19 also tell you in that same conversation he gave  
20 authorization to arrest Dior?

21 A Yes.

22 Q That's because the CI implicated Dior directly  
23 in the shooting as well as Ken being the one who passed  
24 the gun, right?

25 A Correct.

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2

Q When the ADA authorized that arrest, had he  
3 seen the records that you had created with regard to  
4 Terab's identification of Spruell, the photo arrays and  
5 the signed statement?

6

MR. THADANI: Objection.

7

A I'm not sure.

8

Q You have no doubt that you made him aware of  
9 it by that point in time, correct?

10

A I'm not sure exactly when I handed him all the  
11 information so --

12

Q Again, I'm sorry, I --

13

A I just don't remember --

14

Q I'm trying to keep a distinction between when  
15 you discussed it with him as opposed to when you turned  
16 it over.

17

Did ADA Birns in connection with this case  
18 visit the squad on a regular basis?

19

MR. THADANI: Objection.

20

A Regular basis, no.

21

Q Let's start with did he visit the squad with  
22 regard to this investigation before Ken was arrested,  
23 physically?

24

A I'm not sure.

25

Q If he had gone to the precinct and the

1

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2 detective squad before Ken's arrest, would there have  
3 been any reason to deny him access to anything in the  
4 case file?

5 A No.

6 Q Again, based on your testimony, you may not  
7 know exactly when, but there's no doubt in your mind that  
8 you made detective Birns aware of the fact that there was  
9 conflicting evidence about who passed the gun?

10 MR. JAFFE: ADA Birns.

11 Q ADA Birns.

12 MR. THADANI: Objection.

13 A I don't have a specific recollection of  
14 discussing that with him.

15 Q As you sit here right now, is there any  
16 possibility in your mind that you did not tell ADA Birns  
17 about Terab's IDing Spruell and not Ken before Ken was  
18 arrested?

19 MR. THADANI: Objection.

20 A I don't think so.

21 Q You're pretty sure you did?

22 A I said I don't think so.

23 Q You don't think you told him or you don't  
24 think you didn't --

25 A I don't think I didn't make him aware.

1

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2 Q You think you did tell him?

3 A I think I did tell him.

4 Q There you go. My fault.

5 At the time that --

6 A Can I just add something?

7 Q Sure.

8 A I'm sorry.

9 I think the reason why we didn't use the  
10 bodega owner in the grand jury was because he had the  
11 two -- first he thought it was Kijafa and then he said it  
12 was Kenny.

13 Q Are you saying that the bodega owner at  
14 sometime testified --

15 A No, he didn't. That's why we didn't --

16 Q Let me finish the question.

17 Are you saying at some point in time the  
18 bodega owner indicated that he changed his mind and Ken  
19 was the one that passed the gun?

20 A He did change his mind and said that Ken  
21 passed the gun.

22 Q Did you write that down anywhere?

23 A I don't believe 'cause after the CI came in my  
24 office and identified Ken as passing the gun and Dior is  
25 the one getting the gun and going outside and shooting I

1

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2 called up the bodega owner. I said are you sure on  
3 Kijafa passing the gun because I have somebody else --  
4 and I didn't tell him who was in there -- saying that it  
5 was somebody else who passed the gun, and he told me that  
6 well, he thought because Dior and -- no, Kijafa and Dior  
7 were always together that it was Kijafa, and that the  
8 shelving with all the stuff, the potato chip racks and  
9 stuff, were in his way, he might not have seen who it  
10 was. So that's why we had him come into my office and  
11 view the video. Once he saw the video, he said that's  
12 Kenny passing him the gun.

13 Q Are you aware of the fact from any resource  
14 that when the bodega owner was deposed that he  
15 unequivocally said that that never happened?

16 MR. THADANI: Objection.

17 A I don't know when on the deposition, but he  
18 called me up one day and he said that lawyers came to him  
19 and they wanted him to sign some papers. He says this is  
20 where I make my money. I don't know what to do. He was  
21 fearful of Kenny. He told me that Kenny in the past had  
22 beat him up. He goes -- I said you know what, your  
23 safety is the first concern. Do whatever you have to do.  
24 So he ended up signing a piece of paper.

25 MR. GROSS: Move to strike as not

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2

responsive.

3

MR. THADANI: I object to that motion to

4

strike.

5

Q The question I'm asking you is are you aware

6

of the fact that during the pendency of this civil

7

lawsuit the witness, Mr. Terab, unequivocally testified

8

that Ken did not pass the gun and that, in fact, he

9

wasn't even in the store that night?

10

MR. THADANI: Objection.

11

Q I'm just asking you if you're aware of that or

12

not.

13

A I don't know what he testified in a

14

deposition. I know what he told me, that lawyers -- and

15

I don't know who that was -- wanted him to sign, and I

16

saw the interview with Kenny on television where they had

17

him blacked out saying that he told the detectives that

18

Kijafa was the one that passed the gun, but I do not know

19

what he testified to at the deposition.

20

Q When you took this information down originally

21

from Mr. Terab about the identification, that he picked

22

out the two people that were involved in the passing the

23

gun, Dior and Spruell, that was significant information

24

in this investigation, right?

25

MR. THADANI: Objection.



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2 Q At the time.

3 A Yes.

4 Q As part of your job and responsibilities, you  
5 did what you were supposed to do and you documented it by  
6 creating the documents that we've been talking about  
7 here, correct?

8 MR. THADANI: Objection.

9 A Correct.

10 Q Before Ken is arrested, Kijafa verbally, you  
11 said, recanted that identification?

12 MR. THADANI: Objection. You said  
13 Kijafa.

14 Q I'm sorry. Fawaz verbally recanted that  
15 identification?

16 A Yes, he did.

17 Q You never made a record of it anywhere, is  
18 that your testimony?

19 A Yes, it is.

20 Q Do you think that that recantation was  
21 significant information with regard to this investigation  
22 as to who passed the gun?

23 MR. THADANI: Objection.

24 A Yes.

25 Q Did you know that if this case came to trial

1 GLENN GODINO 186

2 that the question about that recantation without a record

3 would never have been documented anywhere?

4 MR. THADANI: Objection.

5 A Yes.

6 Q Notwithstanding that, you never made a

7 notation, you never wrote it down anywhere, the first

8 time we're hearing anything of it is here today, correct?

9 MR. THADANI: Objection.

10 A Correct.

11 Q By the same token, that the identification of

12 Spruell as the person who passed the gun being Brady

13 information, would you agree that a recantation of that

14 information would also be Brady information?

15 MR. THADANI: Objection.

16 A It wasn't written down anywhere.

17 Q That was not my question.

18 Would you consider it to be Brady information

19 that was required to be transmitted and records made of

20 so that it would constitute Brady and information that

21 would eventually be given to Ken's defense counsel?

22 MR. THADANI: Objection. Calls for a

23 legal conclusion.

24 A I'm not sure.

25 Q Did you advise ADA Birns about Terab's

1

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2 recantation?

3 A I believe I did. I just don't remember the  
4 conversation.

5 Q How did you recount that information to him,  
6 verbally, by phone, face-to-face?

7 A I'm not sure.

8 Q Do you have any recollection about when,  
9 where, how you advised him about the recantation?

10 A I don't remember exactly how, but he was  
11 provided with everything in the case.

12 Q When you say he was provided with everything  
13 in this case, as far as you know, in fact, is there any  
14 doubt in your mind that there is no paper document that  
15 exists in connection with this investigation reflecting  
16 that Terab recanted his identification?

17 A I don't think there is.

18 Q Have you ever seen a piece of paper that  
19 either said that or implied that there was a recantation  
20 from the day this investigation started until today?

21 A I don't think there is.

22 MR. JAFFE: Take a two-minute break.

23 MR. GROSS: Okay.

24 MR. JAFFE: Let's take a two-minute  
25 break. You want to step out.



1

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2 lawyers went to him to sign a piece of paper and he was  
3 concerned for his safety.

4 Q As far as what? What was his concern about,  
5 having done what particular thing?

6 A He felt that he should sign a piece of paper  
7 because he didn't want Kenny to find out that he said it  
8 was him in the video, or him in the store.

9 Q He was concerned about his safety as far as  
10 Ken was concerned but he had no concern about his safety  
11 having gone on record that Dior was the one the gun was  
12 passed to, is that your testimony?

13 MR. THADANI: Objection.

14 Q The one who actually did the shooting?

15 A Right from the beginning he said he didn't  
16 want to testify, he didn't want to be involved.

17 Q Are you familiar with the term material  
18 witness?

19 MR. THADANI: Objection.

20 A Yes.

21 Q If the case hinged on Terab's testimony and he  
22 didn't want to testify, you know very well that he could  
23 be arrested as a material witness and forced to testify,  
24 as long as he didn't commit a crime himself, and he would  
25 be under compulsion to make that testimony, correct?

1

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2

MR. THADANI: Objection.

3

A Yes.

4

Q Whether Mr. Terab said he didn't want to be

5

involved or not, if he was a key witness in a murder

6

case, that wouldn't excuse him from being involved, in

7

your eye, would it?

8

MR. THADANI: Objection.

9

A No.

10

Q In terms of the chain of events, the fact that

11

Terab had indicated and picked out Dior as the one who

12

received the gun and then going outside and then shots

13

being fired was certainly a material part of the events

14

that were needed to be proven to make this case,

15

correct?

16

MR. THADANI: Objection.

17

A Correct.

18

Q You know at some point there was a plea

19

arrangement made with Dior, correct?

20

MR. THADANI: Objection.

21

A Yes.

22

Q You know that as soon as that plea arrangement

23

was made or very shortly thereafter the charges were

24

dropped against Ken?

25

MR. THADANI: Objection.

1

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2           A           Yes.

3           Q           If this case had not resolved itself and the  
4 case had gone to trial against Dior, is there any doubt  
5 that Terab, based on the information you had, would have  
6 had to have been disclosed to the defense and likely  
7 would have been a witness in this case?

8                       MR. THADANI:  Objection.

9           A           Yes.

10          Q           Yes, it would have happened, right?

11                      MR. THADANI:  Objection.

12          A           He probably would have been named, but we  
13 had - we were counting on the CI to do the testifying.

14          Q           Now, this man is a witness, he's on record as  
15 having said that Spruell was the one who passed the gun,  
16 correct?

17                      MR. THADANI:  Objection.

18          A           Yes.

19          Q           Now, without any documentation, the defense,  
20 because they wouldn't know, would be in a position where  
21 they would call Terab as a witness in the defense to show  
22 that he had picked out somebody else other than Ken and  
23 there would have been this big surprise pulled out  
24 without any paperwork to say oh, no he recanted it, by  
25 you, is that how this would have gone down?

1

GLENN GODINO

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2

MR. THADANI: Objection.

3

A I don't know if he would have been used.

4

Q The defense certainly -- if they knew that

5

there was somebody who had identified somebody other than

6

Ken, if that case had gone to trial, there's no doubt in

7

your mind that he would have been called as a defense

8

witness, whether he wanted to come in or not?

9

MR. THADANI: Objection.

10

A They would have been provided with the whole

11

case folder.

12

Q But the case folder doesn't have anything to

13

say he recanted, does it?

14

A That he recanted, no, but it shows that he's

15

saying that Kijafa at first was the one who passed the

16

gun and picked him out in the photo array, but now

17

there's nothing stated that he recanted his story.

18

Q Hypothetically, if this case goes to trial

19

against Ken, based on this information that you created

20

in this investigation, they see him as a great defense

21

witness who comes in and says Ken didn't pass the gun?

22

MR. THADANI: Objection.

23

A Yes.

24

Q Because you say here for the first time that

25

he recanted that you would have been called as a witness



1

GLENN GODINO

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2 and say no, that's not true, he took it back, is that  
3 what you would expect would have happened had this case  
4 gone to trial?

5 MR. THADANI: Objection. What's the  
6 relevance. It's just asking him to  
7 speculate.

8 MR. GROSS: I think it's very  
9 relevant.

10 Q Go ahead, you can answer.

11 MR. THADANI: You're asking him to  
12 speculate as to a nonexistent hypothetical.

13 Q If you had been called as a witness and put  
14 under oath, would you have testified that the  
15 identification by Terab of Spruell was recanted?

16 MR. THADANI: Objection. Same  
17 objection, speculation.

18 A Yes.

19 Q You would have testified to that?

20 A That he recanted it?

21 Q Yes.

22 A Yes.

23 Q Without any paper trail, there's no way that  
24 the defense lawyers would have ever been able to  
25 ascertain that unless and until Terab testified, correct?

1

GLENN GODINO

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2

MR. THADANI: Objection.

3

A Correct.

4

Q Since there's no paper trail, the fact that

5

you may have made that information available to the ADA

6

would not have been something he would have disclosed to

7

the defense because there's no documentation of it,

8

right?

9

MR. THADANI: Objection.

10

A There's documentation of the original

11

statement that I took from him and a photo away. That

12

has to be sent over to the defense attorney.

13

Q I'm talking only about the recantation. I

14

know they get the --

15

A Yeah.

16

Q So they have had exculpatory evidence that you

17

created and then because you got a recantation without

18

any of that being documented that defense is now going to

19

be taken away from them without any warning, correct?

20

MR. THADANI: Objection. You're

21

forgetting about the letter.

22

MR. GROSS: I'll get to the letter in

23

due time.

24

MR. THADANI: Okay, I'm just saying.

25

Q Was what I said correct?

1 GLENN GODINO 195

2 A Correct.

3 Q On August 19, 2011, did you go to the district  
4 attorney's office and review the surveillance tape once  
5 again?

6 A August 19, 2011?

7 Q That's correct.

8 A With which district attorney? I know I  
9 reviewed --

10 Q ADA Gottlieb.

11 A Yes, but I don't think it was in 2011. Wait.  
12 Wait. This was 2006.

13 Q I understand that.

14 A Then it could be '11. I'm confused in the  
15 dates. I was at the district attorney's office with ADA  
16 Gottlieb and reviewed the video with the bodega owner.

17 Q With the bodega owner?

18 A Yeah.

19 Q Did you know that there was a letter sent to  
20 the defense counsel as a result of that?

21 A Yes.

22 Q Did you know that at the time that that letter  
23 was sent, the bodega owner had been identified and the  
24 documentation that you created had been supplied to him?

25 MR. THADANI: Objection.

1

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2           A           I don't know if he was identified.

3           Q           In any case, the identification that we've  
4    been talking about here and the signed statement, you  
5    would expect that information would find the way into the  
6    hands of the defense counsel, correct?

7                       MR. THADANI:  Objection.

8           A           At what point?

9           Q           At some point --

10          A           At some point at trial they would have to, you  
11   know, give everything to the defense counsel.  So I don't  
12   know at one point that they handed everything over.

13          Q           If I were to tell you that during the time  
14   that Ken was in jail he wrote a letter himself where the  
15   identification had been supplied, not only to his lawyer  
16   but to him, that Spruell had been identified by Terab and  
17   that there were the two photo arrays and a signed  
18   statement and they had been supplied to his defense  
19   counsel.

20                      MR. THADANI:  Objection.  What's the  
21   question?  That wasn't a question.

22                      MR. GROSS:  I'm asking if he knows it or  
23   not.

24                      MR. THADANI:  You just made a statement.  
25   There was no question.

1

GLENN GODINO

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2

Q Did you know that before the viewing of the videotape in Gottlieb's office the defense had been made aware of Mr. Terab as a witness who identified someone other than Ken?

6

MR. THADANI: Objection.

7

A I'm not aware of that.

8

Q Do you know that the information that was disclosed to the defense counsel did not indicate who it was --

10

11

MR. THADANI: Objection.

12

Q -- that had picked him out from the videotape?

13

14

MR. THADANI: Objection.

15

A I'm not aware of that.

16

Q You testified earlier, did you not, that when you looked at the videotape you couldn't ascertain from looking at the tape itself who passed the gun to Dior, correct?

19

20

A Correct.

21

Q If I understand your testimony, on August 9, 2011, this same person who positively identified Spruell as the one who had passed the gun went to the DA's office and now, in effect, recanted that testimony by saying it was Ken on the videotape, correct?

25

1 GLENN GODINO 198

2 MR. THADANI: Objection.

3 A Yes.

4 Q Did you make a record of that anywhere? Did

5 it wind up in your case folder?

6 A No, it did not.

7 Q Would you agree that based on your

8 understanding of proper police procedure and the patrol

9 guide and a host of other documents that it's a violation

10 of that procedure not to create documentation with regard

11 to something as significant as a witness recanting his

12 identification?

13 MR. THADANI: Objection.

14 A It should have been documented.

15 MR. JAFFE: What's the answer to that

16 question? We need an answer to that

17 question.

18 A Yes, it should have been documented.

19 MR. JAFFE: Is it a violation?

20 Q It was a violation of proper police procedures

21 not to, correct?

22 MR. THADANI: Objection.

23 A I don't know if it --

24 MR. THADANI: He's not an expert on

25 police procedure.

1

GLENN GODINO

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2

Q Based on your understanding of the police

3

procedures --

4

MR. GROSS: I'll withdraw that for a

5

moment.

6

Q The recantation was, without any doubt, in

7

your mind, significant information, was it, in regard to

8

this case?

9

MR. THADANI: Objection.

10

A Correct.

11

Q You have already testified that any

12

significant information that would be developed with

13

regard to an investigation belongs in the case folder,

14

correct?

15

A Correct.

16

Q This never wound up in the case folder, did

17

it?

18

A No, it did not.

19

Q Now back to the other question, isn't it a

20

violation of proper police procedures not to document

21

something as significant as a recantation of a key

22

witness?

23

MR. THADANI: Objection. He's not an

24

expert on police procedures.

25

A I'm not sure.

1

GLENN GODINO

200

2

Q

Do you think the net effect of not recording

3

that information could have had an impact on the criminal

4

prosecution?

5

MR. THADANI: Objection. Calls for

6

speculation, legal conclusion.

7

MR. GROSS: He's certainly qualified to

8

say that.

9

A

I'm not sure if it would have.

10

Q

We spoke about this a moment ago. Based on

11

the records that exist in your case file, there is

12

nothing in that case file to indicate that Mr. Terab was

13

anything but a very powerful witness to show that Ken was

14

not the one who passed the gun, correct?

15

MR. THADANI: Objection.

16

A

We also had the CI who --

17

Q

Not my question.

18

MR. THADANI: Let him answer though.

19

A

-- who saw Ken pass the gun to Dior.

20

Q

The CI who was never disclosed to anybody in

21

this case, correct?

22

MR. THADANI: Objection argumentative.

23

Q

You know that, don't you?

24

MR. THADANI: Objection.

25

A

He told ADA Birns about it.



1

GLENN GODINO

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2

Q [--- Confidential

3

4

5

6

7

8

9

10

11

12

13

14

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16

17

18

19

---]

20

MR. GROSS: This is not confidential.

21

Q I'd like you to assume that the CI testified

22

and lied about his name after he was sworn in. Were you

23

aware of that, prior to your testimony here today?

24

MR. THADANI: Objection.

25

A No, I was not.

1 GLENN GODINO 202

2 Q When you spoke to the witness, the CI, is it

3 your testimony that you never learned his real name?

4 A Yes.

5 Q Yes, you never learned it?

6 A I never learned it.

7 Q Going back to Terab's identification of

8 Spruell as the one who passed the gun, that documentation

9 was put in your case folder and that document went to the

10 DA's office, correct?

11 MR. THADANI: Objection.

12 A Correct.

13 Q You were aware, were you not, that the grand

14 jury indicted Ken, correct?

15 A Yes, they did.

16 Q Sometime later the same grand jury indicted

17 Dior, correct?

18 MR. THADANI: Objection.

19 A I don't know if it was the same panel, but a

20 grand jury did indict both of them.

21 Q You testified at the portion of the

22 proceedings where the grand jury indicted Dior,

23 correct?

24 MR. THADANI: Objection.

25 A Yes.

1

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2           Q           You did not testify at the portion of the  
3       proceedings where Ken was indicted, correct?

4           A           I did not.

5           Q           Were you ever made aware of the fact that the  
6       CI testified at the grand jury when Ken was indicted?

7           A           I'm not sure. I'm sure he did, but I don't  
8       remember being told that, but I'm sure he did.

9           Q           As the lead detective in this investigation,  
10      you were kept abreast of what was going on with the grand  
11      jury but the ADAs involved, were you not?

12                      MR. THADANI: Objection.

13          A           Yes.

14          Q           So when the case was being presented against  
15      Ken, were you involved in helping to gather the evidence  
16      that would be used in presenting that case to the grand  
17      jury?

18          A           Yes.

19          Q           You were also involved in gathering the  
20      evidence when the case was presented against Dior  
21      sometime later to a grand jury, correct?

22          A           Yes. It was the same gathering of evidence  
23      for Dior that went into Kenny.

24          Q           When the testimony was presented in the grand  
25      jury proceeding against Ken, were you made aware of what

1

GLENN GODINO

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2       that proof was going to be?

3                       MR. THADANI:  Objection.

4           A           I wasn't around when that grand jury went for  
5       Kenny so, you know, Detective Roberts handled it because  
6       he took the arrest.

7           Q           But he didn't testify at that grand jury  
8       proceeding, did he?

9                       MR. THADANI:  Objection.

10          A           I'm not sure if he did or not.

11          Q           I have the grand jury proceedings.  For now  
12       will you take my word for the fact that he did not  
13       testify at the grand jury?

14                      MR. THADANI:  Objection.

15          A           If you read it and you did not see his name --

16          Q           There's no dispute that he did not testify in  
17       front of the grand jury?

18          A           I wasn't aware that he did or he didn't.

19          Q           Regardless of who made the arrest on Ken, this  
20       homicide investigation was yours, not his, correct?

21          A           Correct.

22          Q           As the lead detective, the assigned detective  
23       in this case, organizing the file, keeping track of what  
24       went in the case folder and making the evidence available  
25       to the ADA was your responsibility, correct?

1

GLENN GODINO

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2

A Yes.

3

Q You knew when Ken was indicted, did you not,

4

that there was exculpatory evidence in the folder un-

5

rebutted that Ken was not the one who passed the gun,

6

correct?

7

MR. THADANI: Objection.

8

A Could you just rephrase that. I'm sorry. I

9

didn't --

10

Q I'll rephrase it, sure.

11

You knew that as far as the case against Ken

12

that there existed in the case folder documentation by

13

Terab that indicated that Ken was not the person who

14

passed the gun to Dior, correct?

15

MR. THADANI: Objection.

16

A Correct.

17

Q You also knew, did you not, that that

18

information had been imparted to the ADA before he

19

presented the case to the grand jury, correct?

20

MR. THADANI: Objection.

21

A Correct.

22

Q Do you know one way or the other that that

23

information that there was exculpatory evidence

24

un-rebutted by any documentation was not presented to the

25

grand jury in this case?

1

GLENN GODINO

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2

MR. THADANI: Objection.

3

A I don't know if he presented it or not, ADA

4

Birns.

5

Q If I tell you again -- subject to if you want

6

to review the grand jury presentation in this case,

7

because we have it all -- that there was no evidence ever

8

created before the grand jury in any way, shape or form

9

indicating that there was a witness who had exculpatory

10

information that indicated that Ken was not the one who

11

passed the gun.

12

MR. THADANI: Objection. That's not a

13

question.

14

Q My question is this: Do you think that the

15

failure to provide the recantation of that evidence was

16

something the DA needed to have documentation of with

17

regard to the prosecution of Ken?

18

MR. THADANI: Objection. Calls for a

19

legal conclusion.

20

MR. GROSS: As a detective. Not as a

21

lawyer.

22

Q Did you think that there was a requirement

23

that he have an indication, a record created, to show

24

that the witness had recanted his identification of Ken?

25

MR. THADANI: Objection.

1

GLENN GODINO

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2

A

I provided everything to ADA Birns. I just don't recall exactly when that particular conversation went, but he was given everything in the case, you know, folder.

6

Q

The one thing that we know for certain that was not provided to ADA Birns was any written documentation that he recanted, other than you verbally saying it to him and you're not writing it down anywhere, is that a fair statement?

11

MR. THADANI: Objection.

12

A

That's a fair statement.

13

Q

If ADA Birns felt the obligation to disclose that information to the defense, he had no documentation to point to to show that there had been a recantation of the identification of Spruell by Terab, correct?

17

MR. THADANI: Objection. We've been

18

through this. Asked and answered.

19

A

They would have the written statement where he first identified Kijafa and the photo array.

21

Q

And nothing else?

22

MR. THADANI: Objection.

23

Q

Correct?

24

A

And nothing else.

25

Q

When Terab recanted, he did it verbally to

1

GLENN GODINO

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2     you?

3           A           Yes.

4           Q           And on the phone?

5           A           No. I called him up, the bodega owner, and  
6     said I had somebody else who came in and picked somebody  
7     else as handing the gun to Dior, and I asked him to come  
8     in because I wanted to show him the video, and when he  
9     looked at the video, he saw that -- he said that's Kenny  
10    passing the gun, and I asked him how do you first say it  
11    was Kijafa and now you're saying it's Kenny. He goes --  
12    he made it a point to say that all the -- I'm going to  
13    call them shelving. There's clear Plexiglas that holds  
14    candy and racks that was between the other side of the  
15    counter and where Kenny was standing. So he thought he  
16    was mistaken.

17          Q           All of this detail that was incorporated in  
18    this written statement, where he very specifically  
19    described him walking in the store, the description of  
20    what the gun looked like, him handing the gun to Kijafa,  
21    all of that information now he said was mistaken because  
22    he was obstructed and he made it all up, is that your  
23    testimony?

24                           MR. THADANI: Objection.

25          A           He changed it, yes.



1

GLENN GODINO

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2

Q Did he change the person who the gun was  
3 passed to or did he change the information about what he  
4 observed?

5

MR. THADANI: Objection.

6

A He didn't change the person who the gun was  
7 passed to. He just changed -- after looking at the  
8 video, he said that was Kenny passing him the gun.

9

Q You're telling us that he wrote this statement  
10 out based on what he verbally told you and all of this  
11 detailed information he made up because he never observed  
12 any of it and that's what he admitted to you?

13

MR. THADANI: Objection. That's not

14

what he said.

15

A The story's the same. It's just the person's  
16 different. The person who handed Dior the gun is  
17 different.

18

Q So you're saying --

19

A But the scenario is the same.

20

Q He got everything else right except the face  
21 that went with the person that passed the gun, is that  
22 what you're saying?

23

MR. THADANI: Objection.

24

A Yes.

25

Q You accepted that notwithstanding the fact

1

GLENN GODINO

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2 that you knew at that point that he knew all of these  
3 people very well by sight?

4

MR. THADANI: Objection.

5

A Well, first, that's why I showed him the video  
6 to clarify. Once he saw the video, he said that's  
7 Kenny.

8

Q He said that was Kenny?

9

A Yeah.

10

Q When he testified under oath at the deposition  
11 that he never changed his story and he always said --  
12 including the time that he was interviewed by you at  
13 Gottlieb's office -- that he maintained that it was  
14 Spruell who passed the gun, he was lying then too,  
15 correct?

16

MR. THADANI: Objection. That's

17

improper.

18

A He wasn't telling the truth because he even  
19 was in Gottlieb's office, viewed the video on a computer  
20 and said that's Kenny 100 percent.

21

Q I'm telling you -- and I'll show it to you  
22 when we come back -- that he absolutely said that was not  
23 true, he never said such a thing. In fact, he told the  
24 DA and you at that time that he maintained that it was  
25 Spruell and indicated when he was asked specifically was

1

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2 it Kenny that was passing the gun he said no. In fact,  
3 he even told the ADA and you that Kenny wasn't in the  
4 store that night.

5 MR. THADANI: Objection.

6 Q Is that all made up?

7 MR. THADANI: That's not a question.

8 Q If I'm saying his testimony accurately, are  
9 you saying that none of that happened in Gottlieb's  
10 office?

11 MR. THADANI: Objection.

12 A He never -- in Gottlieb's office, he said that  
13 that was Kenny on the video.

14 Q I'm saying --

15 MR. THADANI: Hold on.

16 Q That's one question.

17 MR. THADANI: He's answering the  
18 question. Let him answer the question.

19 MR. GROSS: No, he's not.

20 MR. THADANI: If you're asking a  
21 question, let him answer the question.

22 MR. GROSS: That wasn't the question  
23 that I asked.

24 MR. THADANI: He's answering the  
25 question as --

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2

MR. GROSS: I'm going to withdraw it.

3

4

MR. THADANI: You already asked the question. You can't withdraw it. He's already started answering.

5

6

MR. GROSS: We'll just do it again.

7

MR. THADANI: Finish your answer.

8

A When he looked at the video, he said that was

9

Kenny 100 percent.

10

Q Now I'm asking you specifically if I tell you

11

that when he testified at the deposition in the civil

12

case that he denied ever saying that and that he said

13

that letter which I showed him was not true, that he

14

never identified Ken at the viewing of the surveillance

15

tape at Gottlieb's office while you were present, based

16

on your recollection of what happened, he was lying,

17

correct?

18

MR. THADANI: Objection.

19

Q At that deposition.

20

A He wasn't telling the truth.

21

Q There's a difference between not telling the

22

truth and lying?

23

A He's lying.

24

Q When he was asked at the deposition, and he

25

was asked specifically was Ken there when the gun was

1

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2     passed, he denied that, he was lying about that as well,  
3     correct?

4                     MR. THADANI:  Objection.

5             A             Yes, he was.

6             Q             When you had this information from Mr. Terab  
7     that identified Spruell as the one that passed the gun,  
8     did you issue an I-card for Spruell?

9             A             No, I did not.

10            Q            Did you ask to have a warrant issued for his  
11   arrest?

12            A            No, I did not.

13            Q            We don't know the exact period of time, but we  
14   know from the time that Terab indicated that it was  
15   Spruell that passed the gun some time passed before the  
16   CI came forward and indicated that it was Ken, correct?

17            A            Yes.

18            Q            You took no action during that period of time,  
19   did you, to arrest, question Spruell or do anything else  
20   in regard to him?

21                     MR. THADANI:  Objection.

22            Q            Is that true?

23            A            I did not.

24            Q            Up to the time that the CI came forward, the  
25   only evidence that you had, and based on the information

1

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2 we've been talking about here, very strong evidence,  
3 indicated that Spruell was the one that passed the gun,  
4 he was one of the participants in the crime that  
5 you were investigating, correct?

6

MR. THADANI: Objection.

7

A That he was, yes, and Dior is the one who got  
8 the gun passed to him.

9

Q Yet based on that you made no attempt, as you  
10 indicated earlier -- at that point in time, you had  
11 probable cause to arrest Spruell, correct?

12

MR. THADANI: Objection.

13

A I wouldn't want to arrest Spruell at that time  
14 for just passing the gun. I would want a witness who saw  
15 the shooting and that would be able to connect the  
16 homicide to them.

17

Q The crime that Spruell committed, if he passed  
18 the gun, is a stand-alone crime, the mere possession of  
19 the gun is a crime and passing it to somebody and then  
20 having it later used in the commission of a crime,  
21 whether or not Dior was the one that pulled the trigger,  
22 is facilitation, correct?

23

MR. THADANI: Objection.

24

A Correct.

25

Q You had plenty of probable cause based on what

1

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2

you got from Mr. Terab to arrest him for criminal

3

facilitation at that point in time, correct?

4

MR. THADANI: Objection.

5

A Yes.

6

MR. GROSS: It's ten after and I'm kind

7

of pooped, and we're going to go on for a

8

while with this anyway.

9

On the record, I have obviously -- and

10

we only saw it for the first time today a lot

11

of original records that I have not been able

12

to make sense out of and that I had planned on

13

questioning. I expect to probably have a full

14

day with the witness the next time we come

15

back.

16

Is that a problem with you?

17

MR. THADANI: What do you mean by

18

original documents that you saw for the first

19

time?

20

MR. GROSS: You brought over the

21

original file today.

22

MR. THADANI: I brought over the

23

original file. My recollection is there were

24

two pages that were photocopied that were,

25

perhaps, not previously disclosed that were

1

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2

part of the spiral notebook and other pages

3

were copied due to legibility, which wasn't

4

raised, at least while I've been assigned to

5

this case, to me as an issue before today.

6

From our perspective, at least right

7

now, right this moment, is you have seven

8

hours in one day to do the deposition. We

9

understand that there was time today taken to

10

reviewing the documents. So at this time what

11

I'm allowing for is two hours on a subsequent

12

day to continue and continue the deposition.

13

MR. GROSS: Then you're going to stop

14

the deposition at this point?

15

MR. THADANI: That's our position at the

16

moment.

17

MR. GROSS: I want to make a record that

18

based on what you're saying now I want to go

19

back to Judge Freeman and have a very thorough

20

discussion about this, and I'd like to have

21

her have the transcript available when we do

22

so. I'm hoping we can work it out --

23

MR. THADANI: We may be able to. That's

24

my position on the record right now.

25

MR. GROSS: Subject to what, when we



1

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2

reschedule this and he's coming back, is that

3

going to be your position then or are you

4

going to possibly change it?

5

MR. THADANI: My position right now on

6

the record is we're allowing for two more

7

hours on a subsequent day. If we have

8

subsequent discussions after we're off the

9

record in terms of scheduling, we'll talk

10

about that and see if it's necessary to go to

11

the judge on this or not.

12

MR. GROSS: Just for the record,

13

notwithstanding what that discussion may

14

entail, I think your position is entirely

15

unreasonable in light of what's going on

16

here.

17

MR. THADANI: On what basis?

18

MR. GROSS: On the basis of the fact

19

that there is an enormous amount of

20

information of this particular witness, and

21

he's the most significant witness as far as

22

the police department is concerned in this

23

case and I shouldn't have my hands tied in

24

being able to fully examine him.

25

The ability to examine beyond seven

1 GLENN GODINO 218

2 hours is always subject to either an agreement

3 or getting the magistrate. I think under the

4 circumstances of this case I have no doubt

5 that the magistrate is going to say we're

6 entitled to more.

7 MR. THADANI: What is your expectation

8 with respect to how much longer you think

9 you'll need to completely finish this witness?

10 MR. GROSS: I don't know.

11 MR. THADANI: Do you think it's gonna

12 take more than another full day?

13 MR. GROSS: No, I'll finish him in one

14 day.

15 MR. THADANI: Defendants' position is on

16 the record, but we'll have a discussion about

17 this further.

18 MR. GROSS: Okay. That's fine.

19 MR. THADANI: The deposition is being

20 kept open, obviously.

21 MR. GROSS: Yes.

22 We left the other issue open, which

23 still has to be addressed, which is the letter

24 application we made with regard to the --

25 MR. THADANI: That will be addressed by

1  
2  
3  
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the filings, so understood.

MR. GROSS: Right. Okay.

Thank you.

(Whereupon, the within examination was  
adjourned at 5:15 P.M.)

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A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK )

5 : SS:

6 COUNTY OF )

7

8 I, GLENN GODINO, hereby certify that I have  
9 read the transcript of my testimony taken under oath in  
10 my deposition of April 11, 2016; that the transcript is a  
11 true, complete and correct record of what was asked,  
12 answered and said during this deposition, and that the  
13 answers on the record as given by me are true and  
14 correct.

15

16

17

\_\_\_\_\_  
GLENN GODINO

18

19

20 Subscribed and sworn to  
21 before me this \_\_\_\_\_ day  
22 of \_\_\_\_\_, 2016

23

24

\_\_\_\_\_  
NOTARY PUBLIC

25

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## C E R T I F I C A T E

STATE OF NEW YORK                    )  
                                                  :       SS:  
COUNTY OF NASSAU                    )

I, ANDREA BLOECKER, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That GLENN GODINO, the witness whose deposition is hereinbefore set forth, was duly sworn by me, and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of April, 2016.

  
ANDREA BLOECKER

